

**CLARK COUNTY PLANNING COMMISSION  
MINUTES OF PUBLIC MEETING  
THURSDAY, JANUARY 18, 2001**

City Hall Council Chambers  
210 East 13<sup>th</sup> Street  
Vancouver, WA

6:30 p.m.

**CALL TO ORDER**

The public meeting of the Clark County Planning Commission was called to order at 6:30 p.m. by Acting Chair, Carey Smith. The hearing was held at the City Hall Council Chambers, 210 East 13<sup>th</sup> Street, Vancouver, Washington.

**ROLL CALL**

Members Present: Dick Deleissegues; Lonnie Moss; Ron Barca; Carey Smith, Acting Chair; and Sandra Towne.

Members Absent: Jeff Wriston, Vice Chair; and Vaughn Lein, Chairman.

Staff Present: Dale Miller, Planner II; Gordie Euler, Planner II; Bob Higbie, Long-Range Assistant Manager; John Tyler, ESA Coordinator; Joe Rupley, ESA Manager; Patrick Lee, Long-Range Manager; Marlia Jenkins, Policy Analyst; Rich Carson, Community Development Director; and Sonja Wiser, Administrative Assistant.

Other: Cindy Holley, Court Reporter.

Patty Dornbusch, National Marine Fisheries Service

**GENERAL & NEW BUSINESS**

**Approval of Agenda for January 18, 2001**

The agenda for January 18, 2001, was approved as distributed.

**B. Approval of Minutes of November 2, 16<sup>th</sup> & 30, 2000  
& December 7, 2000**

It was **MOVED** by Dick Deleissegues and **Seconded** by Ron Barca to **APPROVE** the Minutes of November 2, 16, 30 & December 7, 2000. **MOTION WAS APPROVED** by unanimous voice vote of all members present.

## **Communications from the Public**

None.

### **PUBLIC MEETING ITEMS:**

#### **Performance Audit Review – Rich Carson**

SMITH: Welcome aboard. All right. Tonight's hearing will include the performance audit review and followed by the briefing on environmental issues. Is that the order we want to take these? Or I just wondered.

LEE: I would do the performance audit review.

SMITH: We'll do, we can do that, we want to do that first.

LEE: Yes.

SMITH: I was just wondering if everybody in the audience was, okay.

LEE: I'm sorry, I thought you were asking me.

CARSON: They're on the edge of their seats.

LEE: Okay. I'm just going to turn this over to Rich Carson, Director of the Community Development Department, who -- one of his first comments when he came to the County was we ought to do a performance audit on us to help us find efficiencies and do our jobs better, and sometimes what you ask for you get, so here we are.

CARSON: This is a fairly low-tech presentation, there won't be any Power Point. Actually when I started two years ago as director within about the first month I ran into the County auditor Greg Kimsey on the street and I asked him to audit me. And it was not so much -- it was, I guess, as much out of survival on my part, I figured if I asked him to audit me in the front end of my job instead of somebody else asking at the end of my job, I might last a little longer, but I had used, I've worked -- I've used performance audits in the past and been around them working in other government agencies, and at the time Greg was saying that this, you know, was something he wanted to do and he thought it would be, would be useful. So it has been from the very beginning a collaboration, as a department we work very closely with the Auditor's Office and with the Board and with the consultants through this process.

Part of the reason I did it was that when I came into the job there -- members of the Board were unhappy, members of the development community were unhappy, certainly all of staff were unhappy. The Board talked to me a lot about wanting to achieve cultural

change within the organization, within the department, so that it became more an organization that was as much driven by customer satisfaction as by regulation. So Kimsey was an idea that he embraced, the Board of County Commissioners put up around 200, a total of \$240,000 and a lot of contract for \$216,000 to a firm called City Gate that specializes in performance audit of government agencies, city agencies and community development departments. So we started -- we let that contract in February of 2000 and we basically wrapped up the performance audit in November and made a presentation to the Board, and I'm in the process now of getting ready in February to kind of roll out the schedule and strategy of how we will implement what resulted in 44 different recommendations to make improvements to the department.

And I'm going to go over some of those tonight, anywhere along the line stop me if, if you have a question about something. I'm not going to go through all 44 recommendations, some of them seem a little redundant. One of the things, I just want to say one of the -- actually before we -- at the time we started the performance audit I had already come up with a short list of about 32 items that I had already wanted to implement because a lot of the things that I were hearing, people were concerned because -- the things I was hearing from applicants, developers and citizens, but that people weren't getting phone calls back, so one of the first things we did, we didn't wait for the audit to give us recommendations, we just started working on things.

One of the first things we did is implemented a system of keeping phone logs. Everybody in the building keeps a phone log of all, all their incoming phone calls and how, how soon they responded to that phone call. And the informal target that I set was to try and achieve a 95 percent call back rate within 24 hours, and I'm glad to say that at year-to-date, at the closeout for 2000, we made on average 95 percent of our phone calls were called back. The other big one, you know, was that we would lose people's files for one reason or another so we have set up a fairly rigorous kind of document control system. We have closed off a lot of the building. A lot of times it was just people coming in and dropping off a file at somebody's desk that they thought they were handling the project and they weren't and they had no idea what it was. So everything comes across the counter now, everything is date, date stamped, we have bins, we've talked about issuing paddles to the, you know, the assistance to enforce it, but we won't go that far in terms of control, but we have done a lot better job on that too. So just small things like that in terms of calling people back and not losing their files makes, makes a big difference. There was some -- in the audit there's some strategic recommendations and I'm just going to talk about those in general. And luckily Marlia Jenkins came by to sit in the audience so she's done a lot, a lot -- she's a lot more, I guess, intimate with the report than I am so she'll be able to answer those questions too.

The first main one was to focus management attention on deemed fully complete process and provide customer choice in order to implement a 30-day cycle time standard. What that means is a couple of things. One is that they said that we should make the pre-app process optional and make it free. There's a lot of people that already know what the process is in the County and those folks if they want, you know, want to just bypass the

pre-app could save about 30 days in time. And time is money in this case. And we decided to make it free because if we made it optional, then the people that really needed it who don't deal with us very much probably wouldn't want it. And I don't, that wasn't a really big deal in terms of implementing that.

The next one -- of the 44 the next one for me is problematic, and I have to say of the 44 recommendations that are in here I find that 43 of them, but this one is a problem. What they said was to change the fully complete process and create something called substantially complete. And what that means is that somebody could come in with a lot less information, get the clock started, and I think the response I got back from the, you know, the consultants was interesting, they said, well, you know, if they are -- if that means that we could in the near term end up denying more people because we didn't get the information we needed on the front end, and if we didn't get it on the back end, we'd have to deny it and they would -- and their response was, yeah, you'll probably end up denying more people, but then the developers will get used to it. And I thought, well, there's a good idea, you know, that will just make them madder.

So the fully complete I think, I need to talk to the Board about this, the fully complete process is important for us because it starts the legal statutory time clock. We may be, I think that we may be asking for too much information, but there is still a basic amount of information we need before we start that clock because I don't want to have to be in a position of hounding the applicant for information and threatening to deny the application because of that. So that, of all the ones that -- of all the recommendations that are here I'm the most concerned about the fully complete process. So if -- just since some of you know I've dealt with that. Any comment on that? Lonnie.

MOSS: Yeah, I can understand why that causes you some difficulty, the concept of it, but on the other hand I've seen the other side of this where your fully complete process I believe has become something that is unrelated to the decision making process. For example, I've personally had projects that were deemed not fully complete when the information was there in detail in the narrative, but your fully complete reviewer doesn't read the narrative, that's not a part of the process that's been developed. We have, -- I can tell you my experience right here in front of the public and it's been pretty dismal. I'd say of the last half a dozen projects that I've turned in, all of those have been deemed initially not fully complete and yet with extended discussions with staff every one of them has been turned around with one exception. And the most recent one I was deemed fully -- or not fully complete on three items, one of those was that I hadn't shown fire hydrants within the direction and distance the fire hydrants with -- from a subdivision, in fact there were two fire hydrants, both shown in several places on the plat. Another one was that there were -- the driveways across the street were not shown, in fact there weren't any. And the third was that my infiltration test was not signed by a professional engineer, although I'm a professional engineer and submitted it as part of my stormwater plan.

Now, you know, my experience on -- in that one I agreed that I was not fully complete because I had not signed the infiltration test or submitted a transmittal letter saying that I

had reviewed it and accepted it as a PE. In the other cases that I've talked about the information was already there. Now those are, you know, these are personal anecdotes that I can talk about, but I guess my conclusion has been as a member of the development community that the fully complete review process doesn't yield anything that's worthy of the gas pains that it causes.

CARSON: Well, and I think that was -- there was similar kind of comment about the pre-app process and I can understand that. I guess my concern is how can we, how can we as a department do a better job in getting people through the fully complete. The biggest problem with fully complete that I hear is what -- kind of what you're saying, and others have said is that, you know, if we could get to it quickly and efficiently it would be fine, but we're asking for too much information and we are going to routinely throwing it back to people and saying it's not complete. So for me it's how can we improve that process so it works for everybody.

MOSS: Well, I think that you could arrive at a compromise. And that's that it seems to be that what people are looking for when they say "substantially complete" is something that in fact is that and if you altered your requirements for fully complete you'd get that. I'm not sure that you need to throw the process out, but I'm bothered that professionally prepared applications are so often deemed to be not fully complete. I don't understand a process that yields that result.

CARSON: Okay. Well, it is some, it is part of the -- it is part of the recommendations. My main concern is that we just not do away with it completely and that we find some way to, you know, kind of maybe cut it back to the point where it actually works for -- it can work for everybody, but that, but that's really the only one in terms of recommendations that I've had that I had any gas pains with.

MOSS: Well, I would make one more comment. And I do think that it's necessary for some sort of routine review to be done to determine whether or not an application is sufficiently complete for you folks to do your job and determine whether or not it's acceptable. On the other hand, it appears to me that what the process is being used for is to buy time on behalf of the County; that if my project is deemed not fully complete, then the time starts over again, I have to resubmit, there's another 21 days to determine whether it's fully complete the second time.

CARSON: Well, in reality under -- because of State law if a project is not fully complete your time doesn't start at all. In terms of County time we can --

MOSS: I'm talking about time that you folks have.

CARSON: You can resubmit in reality.

MOSS: Okay, you have 21 days to determine whether my project is fully complete. You determine that on the 21st day that it's not I have to resubmit, you have another 21 days.

CARSON: Yeah. Well, I think, I think that -- I think there's a lot we can do with the fully complete to improve it.

MOSS: Me too.

CARSON: But that's the one that I'm going to be just from, because -- because fully complete is under State law a legal trigger to start the process and it's just -- and really, and let's be honest, it shifts the burden, then, to us. Once it is fully complete we have so long to get going, you know, and render an answer. But, anyway, let me, let me go ahead and get through them.

They talk a lot about customer service ideas like unanticipated service, in other words, picking up the phone and calling somebody and tell them about their project when they hadn't called you. And I do that, and every time I do it somebody's so -- they're pretty amazed that it happened. Study the feasibility of giving the director some approval authority currently vested in the hearings examiner. This -- one of the things we're talking about is moving to a more administrative process for some applications. Let's -- for example, subdivisions, instead of sending it to a hearings examiner what it would be it would be a staff review only, a more technical exercise. It would preserve the due process requirements because if somebody came in and wanted a hearing we would grant it, but my experience is with these that 75 percent of the time no one is asking for a hearing.

The trade-off for the neighborhoods is that we would require that the developer take their application and their project to the neighborhood association and make a presentation on it on the front end. And any, any smart developer does that anyway because if you go there and talk to folks, you can resolve about 90 percent of their issues on the front end. So, you know, we're going to be looking at don't have any more administrative process, it will save money because we won't -- 75 percent of the time we won't pay, be paying a hearings examiner to do that, it will cut some time frame out of that because -- in notice requirements and those kinds of things. So we'll approach the more -- and it will mainly be for -- it won't be for zone changes, it will be for subdivisions and those kinds of things. So that that will be, it will be an interesting experiment to see how it works.

The other is in terms of engineering to try and reduce cycle times. A lot of folks don't realize it but once you've gone through the land use process, and once you go for a hearing and they render a decision, that's just barely the beginning of a project because then you have to build it, which means you go through a whole set of meetings and reviews with engineering and inspection and that can drag out. A lot of times what happens is you're -- again using a subdivision, the engineer will lay out the subdivision and the roads and the water and the sewer, the fire hydrants, bring it in and give it to the our engineers and they will mark it up and red line it and send it back. That cycle of red lining and sending back sometimes can go on for a long time.

And it could go on for two reasons. One could be that the consulting engineer isn't very

good, the other could be that my engineer's too picky, so what we decided, I can't believe that, right, but so what we've said is, well, you know, we're going to try and cut our cycles down to three sets of red lines. By the time -- if you get to a third set of red lines, you know, we're going to have an all hands meeting. And I've done this myself where, you know, the cycle keeps going and it goes out, it comes back, it goes out, it gets back, and a lot of times if I just call in all -- both sets of engineers, myself, plus the applicant and everybody realizes what the problem is we can solve it right there on the spot and finish it.

A lot of times the applicant will realize how much money they're paying their engineers on an issue they don't even care about, and a lot of times I'll realize that our engineers are spending way too much time on an issue that I don't care about and we could, you know, and we can just kind of move on from that point. So this idea of working to go through the plan check cycle no more than three times is -- I think is a really important one and it will save everybody a lot of time and a lot of money.

Let me -- I'm going to skip through some of the specific recommendations. Here's a really fascinating one, which is require all merit salary increases for department employees to be subject to an annual employee performance review. The managers in the County is already paid on a merit based system and this case this will be a, this will be a union negotiation issue. So I'm completely out of the loop on this one, but it will be interesting to see what, where they go with that. Institute a continual improvement program in terms of for the customer service division. Institute a case management approach to the development review process at a minimum for Type 2 and Type 3, but that's where a specific person is assigned to an application cradle to grave. Right now what happens is you make application, it moves through the system from over-the-counter to Planning to Engineering to the fire marshal to Building and you call up and try and figure out where your application is in the building and it's not the easiest thing in the world to do.

One of the things that I have done is hired a full-time, what would we call it, a development ombudsman, in this case it's a development ombudswoman, whose job is to be an advocate for the applicants. And in the hierarchy of applicants her -- the people that she spends a lot of time with are basically nonprofits. It could be churches, schools, housing authorities, you know, people that are doing God's work one way or the other because they don't do this work very much and they have a hard time getting through the process, but it is also somebody building a garage or a developer, her job is to find out where the project is and move it down the line. If it's been sitting at somebody's desk for two weeks because they're in Maui, then she will pick it up and move it to the next person and keep it going. But it -- and it could be because there's, there is no problem, it's exactly where it's supposed to be and she'll just tell them where it is in the cycle. And sometimes that's all they need to know is just where it is in the cycle because they're clueless where it is. So having her, she is part of that case management system even though the case management system will take in a lot more than that.

Reinforce a functional chain of command, which means that if you want to resolve an issue with your application, you don't start with the Board of County Commissioners, you

start with some, you know, you start at another level. You know, if it's a, if you're -- if it's in Engineering, you talk to the head of the engineers; if it's in Planning, you talk to the head of Planning or the building official, and if they won't do it then talk to me and I'll do it, but reinforce the chain of command so that you're not taking an issue three or four steps over somebody's head. And if you do that then somebody at that level will say, you know, well, you ought to talk to Rich or you ought to talk to Pat or you ought to talk to whoever is the appropriate person to talk to. We've talked about adding some folks in Building, in the building inspection group. It's the one place where they've talked about -- they looked at our structure compared to others and felt that we were -- in terms of efficiencies and size and resources we are just about right compared to other places, but the one place that we were weak in was Building.

There's been a tremendous amount of growth in the County, but the building inspection has not -- the number of people doing building inspections has not grown with it. What that means for the public is that a lot of times the building inspectors are doing so many inspections they're doing what are called drive-bys, they aren't getting in there and making sure that the fire codes and the building codes are being met to the standard of, you know, or as much inspection as we should be doing, and so that's an area we really need to improve and the only way you can do that is to put more people in the field, period. So we'll be, that will be a recommendation that we'll have that goes to the Board, including increasing the level of training available in the building division. The building, the construction materials and construction engineering has changed so radically in the last decade that if we don't -- if those people aren't kept up with the technology, then how would they know what they're inspecting. So they also need a lot more training and a lot -- having more, adding staff also means that they have more time to do -- to actually get the training they need to do a decent job.

It says continue to solve Department computer tracking program issues. This is the infamous TIDEMARK. You know, the only thing I can tell you about this is don't ever do software conversions. And if you do them, don't customize them, take them off the shelf. It has not been -- we have not really paid more than we had needed to, it has just been painful. This is our computerized permit tracking system and the conversion from one to another is, has been an agonizing process and we are still waiting on particular, it is -- it is functioning and it is working, it has a lot of potential when we get there, but it is the conversion process has just sucked up a lot of time.

We aren't going to do anything right away with our permit fees. We actually on the -- some of the, you know, one of the things was kind of when I first came here was a lot of discussion about full cost recovery, you know, collecting a fee that covered the price of the work that we did on an application. We're going to do a couple of things. One is on some of the more minor fees we actually cut some prices on those because they were out of line. We have initiated as part of the performance audit a cost accounting system. What we used to do is kind of take the number of projects people worked on and average the numbers, we are now tracking our cost by projects. So if somebody comes in and says -- at the end of a process and says, you know, what did it cost for you to process my



subdivision, we can tell them because every person who touched or worked on that project from the front counter to me will have their time in there and we can tell them exactly.

So what that allows us to do is, one, after 18 months, maybe two years, but let's say two months, come up with a more accurate number of what it actually costs to do a conditional use permit or to do a variance or to do a subdivision or a short plat. At that point, then, the County Commission needs to make a decision about how they pay for that, is it 100 percent paid for by the applicant or some percentage that is subsidized out of the general fund or some other way. We haven't got to that point yet. We tried to get to that point before, but because people were not comfortable with the numbers or, quite frankly, our performance we put that decision off. So 18 months from now we'll have enough data that we'll be able to come back and tell folks exactly what it cost.

Another item is to reduce the number of task forces and advisory groups from 18 to 12, give them a sunset, and here they say review them every year and if they need to, eliminate them. Find a way to integrate staff comments into the policy making process. And specifically what that means is not that staff will tell anybody what to do, but a lot of times these -- the ordinances that we end up having to implement could be a lot better on the implementation side if there had been some both either legal or professional planners who were involved in it to say, you know, well, if you do this this will happen, this is where we're going to have a problem trying to divine what you said. One of the ones I dealt with recently when we did the -- revisited the cluster subdivision was that, you know, in a cluster subdivision the roof line of a house could not break the ridge line. It sounds a little like the Gorge. Well, the question, the question to me is, well, wouldn't that depend on how tall you were or how short or if you were standing in a hole or standing on a hill, how would you know, I mean how do you -- how could we figure out where the ridge line was, everybody could -- we could argue that all day long, and the last thing I want to do on ordinances is argue about the interpretation of them, or as much as we can we would like them to be black and white so that we don't have to have that debate and that -- so that people don't even have to ask us, they could look at it and it would be very clear what it meant. So that input is valuable in terms of coming up with ordinances we can implement.

And our even legal. I have had a number of problems in the last two years with trying to implement an ordinance that was in direct conflict with another ordinance, or couldn't be implemented because the language within the sections were inconsistent and didn't make any sense, so that would help.

I think that's, -- I mean that's kind of a -- that's the basics of it. We are doing a lot of work on our processes, a lot of work to reinforce the need for dealing with customers in a positive way and trying, trying to, you know, kind of actively listen to what they're saying and trying to resolve their issues at the very front end of any project and so far it's been going -- it's been going very well. City Gate will come back in about six months to do a review of where we are and how we've done and, like I said, I expect in February to roll

out a complete schedule that, well, I need to -- in terms of rolling it out what we are also in the process of doing is there's a department that's creating a five-year strategic plan, and that all of the things that are in the performance audit and all the things that we have thought up on our own and all the things that the Board has told us they want will be in that plan. So we -- the first part is to talk to the Board about how we will implement the performance audit, and the second part will be, depending on what their preferences are, to integrate that into the five-year strategic plan which deals with both operational issues like permit processing, it deals with policy issues in terms of what Long-range -- Long-range already has established their five-year plan with the Board so it will be a way for us to try and get more, more performance over five years out of the staff we have, and it's also a way to make sure that every time that somebody comes to us and says, well, what if you did this then is it, you know, we would already have it programmed. I mean our answer's going to be, well, we can, what do you want us not to do, you know, in terms of priorities because we have to prioritize these things. Any questions?

SMITH: I guess one that just goes back to Lonnie's question on the completed applications, the way I understand it the reviewer will go through it and if it's in -- it's not complete he'll send it back to the applicant?

CARSON: Right.

SMITH: What's -- maybe this is an impossible process, but what's to keep the fellow from checking the telephone number, calling him and asking about one or two items and that it should be cleared up at the time as opposed to going through another 21-day process?

CARSON: Right. And I think if -- I think that is the best way to deal with that issue is from a, both a -- from a customer service point of view and in terms of cycle times, this, the whole -- this kind of idea of anticipated service, you know, why not just do that instead of starting over again.

SMITH: And there will be times where it can't be resolved, but there may be some times, like Lonnie said, it will be resolved in a couple of minutes.

CARSON: Right. No, I think that's, that's what we need to do.

SMITH: Any questions?

MOSS: Well, you know, I certainly do support a review of the items that are checked in the fully complete determination. I think you've got far too much and much of it is simply unnecessary for you folks to reach a decision, you know. There are -- I mean the one example that I cited is, I'm serious, I've been found not fully complete for not showing driveways across the street from a subdivision where no driveways existed across the street from the subdivision. Now, you know, if I, if I heard that in a telephone call at day three of the review, I'd be happy to deal with that. When I hear that after 21 days I'm not real happy about it --

CARSON: Well, what, and, you know --

MOSS: -- and I hear it by letter.

CARSON: Well, and I'm -- I mean I'm real sensitive to this whole issue about dragging out timelines for reasons like that, whether it's the engineering red lines or, you know, or the fully complete. I think that -- I think the only reason I used the word "fully complete" it's the words that exists in the state law for a reason.

MOSS: Sure, it has to be.

CARSON: And it is not that we -- what I'm saying is I don't, I don't -- we need that there for a reason, but we also need to make it as reasonable as possible. And, but I don't want to get in a situation, quite frankly, that where our philosophy is go right ahead, we'll just deny you later --

MOSS: No.

CARSON: -- which that isn't the place I want to be in. I don't want to be in a position of denying more applications. What I want to do is help folks get, get it, get it through and as fast as reasonable, with as little hassle as possible, and I think we can do that.

DELEISSEGUES: Rich, do you have a check sheet or anything that goes out to the developer that he can submit back with the plans that --

CARSON: Right.

DELEISSEGUES: -- you know, if there are any questions about, or maybe the whole list, you know, these are the things that are required and where are they on your submittal --

CARSON: Yeah.

DELEISSEGUES: -- you know, you put Page 1 or on the plat or in the narrative or someplace so, you know, if somebody can't find something, and particularly because it doesn't exist, that might be a simple way to handle that. And they could go through it pretty fast, if they can't find it, look at the checklist, find out where the developer said it was located and look there, and then if it's not sufficient I think there's grounds, you know, to go back.

CARSON: No, I think, I think that will work. A lot of, a lot of the -- we are, I think, trying to get a lot of information as early as possible that we don't necessarily need and I think that's the issue is, you know, what do you need to get this thing moving so that you know just basics, you know, if you're a developer that the owner of the property is actually signed off on this, you know, what I mean that -- what we need is we just basically need

that, that kind of information. There's a lot of things that -- transportation studies and things that can come later and, you know, that they can do. So that's, but we're going to have to work with, you know, we'll have to work with our own customers on that in terms of coming up with a reasonable -- what's the reasonable position to start from.

DELEISSEGUES: Okay.

SMITH: Any more questions? Sandra.

TOWNE: I had a question on the possibility of reducing the public hearings, and you were suggesting maybe you did that more with more of the subdivisions, well, how would some of the type conditional, conditioned approvals, who will be making the decisions on those conditions and would that be staff or --

CARSON: Well, right now what happens is that the staff makes recommendations in terms of the conditions and it's reviewed by a hearings official so I don't think that that part would change other than if no one want -- no one wanted a hearing on it. In other we would still send the same notice and the reports out to neighbors and neighborhood associations, and if they looked at it and said, well, you know, the developer came in and gave us a presentation and said they would do this and do that and, you know, and to mitigate these and these are the conditions and then I don't care. You know, and I took this idea early on to the neighborhood association umbrella group for the County which has 33 different neighborhood associations, 36, three, three and two years they've had it, they were real positive about it because right now -- I'll give you an example of what happened.

I think the first meeting I went to here at the County was for the amphitheater, okay, the first meeting. I go into the room, I sit down, here's the planners, here are the applicants and then here's, you know, like a -- there was like a dozen neighbors on the side. So we go through this process and they're doing their presentation, and I turn to the planner and said why are they so quiet, he said they're not allowed to speak. Well, gees, that's nice. So what we're, you know, the neighborhoods are really receptive to this because it gives them a position, an important part of the process in the very front end. They don't have to approve it but it forces the developer to go to them, talk to them about their issues, their concerns and try and resolve them on the front end. And if the, you know, developer fails to do that, well, then there's a real good chance there's going to be a hearing, but it gives the developer that opportunity, too, to come in and wheel and deal with the neighbors in terms of that they need a sidewalk to the school or if whatever they can do, it works a lot better.

TOWNE: If -- I mean now you've just made me think of another question.

CARSON: Hopefully not about the amphitheater.

TOWNE: No, just this process. If a developer doesn't go to the neighborhood

associations how -- you will continue, the planners will continue with the notices to the neighborhood; is that correct?

CARSON: Yes. One possibility is that it would be on the list of the fully complete. And that is if you haven't gone to the neighborhood and talked to them, again, they don't have to approve it, all you have to do is say, yes, I went to the neighborhood on February 12th and made my presentation, period, and just say it and sign it then that would deal with it, but if that didn't happen, one way to deal with it would be through the fully complete process, we wouldn't start the application. Another way to do it is that we don't tie it to fully complete, but it is unstated that if you don't do it, it could be an automatic hearing afterwards. Or a third is that we ask people to do it and if they don't do it, they run the risk of having the neighborhood appeal it. And the neighborhood could -- we could allow the neighborhood to appeal it for free. I mean there's a number of ways of active, you know, of directly or indirectly kind of making that happen in a way that works for the neighborhoods. And the important thing is if it's a developer that knows what they're doing, it will work for them because it allows them, 75 percent of, to go through an administrative process, it will be cheaper because we don't have to pay the hearings official and it will reduce our staff time.

TOWNE: That's great, I just think that communication is essential and to for -- the more the planners and staff can facilitate communication I think that's a big part of your responsibility is that facilitation. So those are all great ideas, I think.

MOSS: What are you going to do when there's no neighborhood association? Just food for thought, right, you don't have to answer that right now.

CARSON: Like will there ever be, ever be any less environmental regulation. You know, if there's no neighborhood association one of the things that I've -- have taken, got a lot of -- let's see, take a lot of heat for, heard back from folks is, especially the neighborhood associations, which is just because it's not inside my district boundary doesn't mean I'm not interested. And even -- and so even though there may not be a neighborhood to go give a presentation to, there will be -- there will still be a neighborhood who might want to appeal it. So I'm not sure how to deal with that. You know, if we require you to go to a neighborhood or the nearest neighborhood association or not at all, I mean that's something we still need to talk through, but every time one of these things slips by because it was half a mile away from a neighborhood association boundary I hear about it. So it's better to be more inclusive than not on these kind of things because I think the same theory holds, which is if you go talk to people and tell them what you want they may not like it, but it will reduce the number of people who are against it if you deal with them in good faith.

MOSS: Yeah, I don't disagree with what you say at all there. Your -- I think your proposal to possibly do away with the hearings is a good one to think about, but it strikes me, then, that, that the one difference that we've had between subdivisions and short plats, the only real significant difference that we've had has gone away. And I've wondered about this

for some time and I'm going to make my comments for what they're worth here, and that's that, that Clark County treats the short plat process, and I should define for our audience what the difference between a subdivision and a short plat, and that's that a short plat is a subdivision of four lots or less, a very small subdivision. They're recognized differently under State law, it's anticipated that they won't go through the same level of review as a bigger subdivision which ostensibly has more --

CARSON: Impact.

MOSS: -- impact and there's much more public interest at stake. Clark County really doesn't have much of a difference in process between short plats and subdivisions and this would reduce that to almost none. While there are some minor differences, the big difference is that a subdivision requires a public hearing. I would suggest if you're going to take a look at that that one thing you really ought to look at, too, is how to abbreviate the short plat process because I think your staff is spending an inordinate amount of time on small projects which have very little impact, there's little public interest at stake in those, and yet there's an awful lot of time and money spent on the review of those. So I'd hope that maybe you could do those things concurrently. I would point out that we work in other counties too and the process of short platting in many of the other places that we work is much, much simpler than it is here and yet I don't think there's any public interest sacrificed at all.

CARSON: I think we'll end up spending more time looking at short plats not only because of this process, but because of the Board's action to suspend the in-fill ordinance because it wasn't doing what it should. They didn't feel it was doing what it should and short, you know, and short plats are -- can, you know, can be used in in-fill projects, but we need to look at that, too, in terms of how, how to make those kind of -- those kind of small projects pencil so people actually do them. Right now they aren't doing them because they don't pencil.

MOSS: Right.

CARSON: So we'll be looking at the short plat both as part of the administrative process and as part of the in-fill ordinance.

SMITH: Any more questions? Thanks, Rich.

CARSON: Thanks.

TOWNE: Thank you.

**PUBLIC MEETING ITEMS**, continued

**B. Briefing on Environmental Issues – Gordon Euler**

SMITH: Our next agenda item is the background and environmental issues. I'd like to think of that as environmental opportunities, but --

LEE: Okay. Actually I think it was at our November 30th meeting out at Camas High School that you had asked us to maybe put together a little more detailed briefing on some of the environmental issues so that's the promise that we're trying to fulfill tonight. What I would propose that we do is have Gordon Euler of our staff provide some background on, you know, sort of the four or so key pieces of legislation or rule making that we're kind of being faced with in the short term in terms of turning around some potential changes in ordinances, et cetera. I'd then like to invite Joel Rupley, our new ESA coordinator for the County, to come forward, want to introduce himself and maybe make a few remarks, and also invite, perhaps, members of the ESA Advisory Committee to come up and talk about some of the things they're doing. And I've been at a couple of meetings with the Advisory Committee and we've had some really good discussions. And they are proposing, for example, that maybe we should add some policy language in the comprehensive plan review that gets at some of these ESA issues so I think they might have some brief remarks about that. And then I would like to have Patty Dornbusch of the National Marine Fishery Service come up and talk about sort of NMFS perspective on the ESA issues and, you know, any guidance or advice that she can give us in terms of possibly addressing those concerns that may be helpful as we work through these processes. So if that's an okay organization, I'd turn it over to Gordy.

EULER: Thanks, Pat. For the record, I'm Gordy Euler with Long-Range Planning. Tab A in your handout, at least in my book, was essentially a briefing paper to the Planning Commission that I was asked to put together as background on environmental issues. There are a number of things that have happened or are happening or will happen at both the State and Federal levels that may affect the update of the plan, and not the least of which are the new Endangered Species Act requirements which you're going to hear quite a lot about tonight. I'm just going to basically hit the high spots here and then we'll take some questions, we've got some other speakers that will provide you more information, more in-depth information when we get there.

In terms of the Endangered Species Act we do have Patty Dornbusch here from NMFS. She'll give you a little more detail, but National Marine Fisheries Service ruled the so-called 4(d) Rule, which you've heard a lot about, and will hear a lot more about, which prohibits the take of threatened species, or at least for steelhead took effect last July and similar rules for salmon took effect on January the 8th, just a week ago, and local governments are now required to develop regulations for a standard of land use and other activities that prevents "take," defined roughly as anything that threatens the continued existence of listed species. And like I said, we'll hear more about what exactly

that means. Ultimately all of the County's critical areas ordinances, the wetlands ordinance, the habitat conservation ordinance and the like will all have to be 4(d) compliant, as will any activities that are undertaken by County staff or on behalf of the County. As you'll hear later the County has a number of things already going on, including the Endangered Species Task Force, and we'll hear more about that later.

Another part of this is the habitat conservation ordinance which was enacted in 1997. That ordinance replaced the vegetation clearing ordinance and it so happens that the HCO exempts agricultural and farming activities. And that exemption was appealed to the Growth Management Hearings Board and it was decided that that exemption was too broad and the County was then asked to develop -- or go back and revisit that ordinance and develop some kind of language that takes away the agricultural exemption. You, the Planning Commission, recommended I think it was two years ago that the ordinance be put on hold until we determine what best available science is as it relates to this issue. Primarily the issue is the establishment of riparian buffer areas around streams. We have a new time frame that was agreed to to complete the ordinance showing that that would be done by the end of March of 2001, barely two months from now.

We had the idea of convening an agricultural exemption task force, it was going to look at best available science as it exists and complete the ordinance per this time schedule. There is a State level working group, which you'll hear more about, the so-called ag, fish and water or AFW working group that's looking at this issue, plus a number of issues that relate to agricultural issues and that sort of thing, and they're not scheduled to complete their work until at the earliest probably will be late in the summer or early in the fall. Given this timing we felt that -- or at least the Board felt on a work session it would be best to hold off on addressing the remand until we've had absolutely the best available science as a result of this State level working group. There doesn't seem to be good consensus on what constitutes "best available science." Most of the work has been done around buffers, around forest streams, in other words upland research, there has been not as much done on lowland riparian areas which is primarily the agricultural land that we're interested in. As kind of an aside, we've been following the project of this same issue also on remand that Skagit County was undertaking. They've tried to address the agricultural issue and basically have had -- it's my understanding is that their efforts to try and resolve this issue have twice been I guess rejected would be the term by NMFS in terms of what they came up with.

Moving along. The next essentially State level act that we're going to have to address is the Shoreline Management Act. There were new rules put in place on November 29th of last year that require that all counties update their shoreline master plans and there are a couple of issues that -- here that are going to affect us. One is that there's a proposed two-year time frame for compliance, and the other issue is with that lot is we feel that there's inadequate funding for what is required as a fairly extensive inventory and analysis process required under the new SMA guidelines. The County has a choice to make in terms of whether it wants to choose a Path A or a Path B. What that means essentially is Path A provides some flexibility on how to meet the new shoreline rules but doesn't -- isn't



necessarily designed up front to be ESA compliant. Again, this is the new rules were put in place with an eye towards the Endangered Species Act. If we choose Path B that would ultimately set forth standards and conditions for protecting listed fish species that both the National Marine Fishery Service and U.S. Fish and Wildlife Service feel are sufficient to protect us from ESA liability; however, both paths, whichever one you choose, require an extensive inventory and analysis of areas subject to the Shoreline Management Act.

Path B essentially says not only do you determine what the ecosystem processes are, but that you restore it and enhance what they call properly functioning ecosystem condition. We've heard or learned that the governor will request approximately \$212 million for salmon recovery assistance to local governments, landowners and State agencies, and this is to include \$8.1 million for grants and technical assistance to local governments for updating shoreline management plans. The work would apply to those limited areas subject to the County's shoreline combining district, but we feel the model developed for -- in the inventory and analysis could be applied countywide when we get to that point in order to meet the 4(d) Rule requirements.

The next one is the Clean Water Act. The County's now implementing new stormwater management requirements under the NPDES municipal stormwater permit issued by DOE and Dale's got a little more information about that.

MILLER: Because of our population size we are required to adhere to special provisions of the Clean Water Act. We currently hold a permit from the State and, as you recall, one of the requirements of that permit was to update our stormwater and erosion control regulations earlier this year. Essentially we've brought those regulations up to State standards. Those standards are now in the process of being revised and updated. Once those are revised we expect to have to look at our local laws one more time and bring those up to speed. Another requirement would likely be the review and the creation, perhaps, of a financially constrained regional capital facilities plan for stormwater drainage. That's expected to be considerably expensive as it will likely also be required to address existing conditions.

When we do review the regulations this coming year, we also anticipate reviewing the entire set within Title 13 of our code of all the environmental regulations. And there are a number of reasons for that, but it makes sense to do it at that time. And it's primarily as a result of the new permit, but also because of the Endangered Species Act and the listing of salmon species. There are considerable discussions -- a number of discussions at a number of different levels going on between the federal government and the states and the local governments and the counties and all the people that are involved in this. Some of the regulations may be directly pointed at stormwater and erosion control, other regulations that may spin out of this may be more in the area of land use regulations such as a percentage of -- a minimum percentage of canopy, tree canopy, within a watershed or a maximum amount of impervious surface within a watershed, but as I said, there is a considerable amount of cordial discussion going on at a variety of different levels.

Finally, there's an effort underway that we are joining in rather late in the process to have the federal government accept the new State stormwater permit requirements as compliant with the Endangered Species Act, kill two birds with one stone, or at least try to address both of those big hurdles at one time. If that is the case, if that is accepted as the standard, whatever is accepted as a standard, you will likely see the local towns and cities within the county also adopting laws similar to ours, similar to the statewide standards, so there may be a regional approach called for or a spinning out of this, this final effort. As I said, I can't emphasize it enough, there is a lot of conversation going on between the different levels of government all across the state. A lot of proposals are on the table, how it will all spin out I don't think anybody is willing to make any definitive statements at this point.

As far as schedule, we may see the new manual, the new stormwater standards sometime in the spring, more likely sometime this year given all of the issues that are involved. With that I'll turn it back over to Gordy.

EULER: Thanks, Dale. I mentioned on the next to the last page the Growth Management Act. There are critical area requirements in the GMA. We're required to have ordinances that protect critical areas, for designate them and require to have ordinances that protect these areas, which we do. One of the key elements we've determined, RCW 36.70A.172 states that best available science shall be used in developing policies and development regulations to protect the functions and values of critical areas. The question comes up in when do we invoke best available science, assuming we can determine what that is. I mention it here because it may have some impact on when we get around to updating the critical areas ordinances how much effort it's going to take to determine what "best available science" is and apply it to those updates, so that's why I mention it here.

As previously stated, and you'll hear more about this, the County has proposed to the National Marine Fishery Service a five-year time frame for updating all their critical areas ordinances, and in fact has sent the habitat conservation ordinance as it stands to NMFS as well for review. Both of these occurred last March. And that includes a couple of more, I'm going to other sections in here. One in terms of what the Southeast, Southwest Washington Clean Air Agency is doing, and I'm not going to spend a lot of time on that there, they've got a model essentially that will tie growth scenarios, you know, you can plug in various levels of growth scenarios which relates to in some ways -- in some cases the traffic that's generated and they can do some air quality predictions. The County has looked at that at some point and said that it may -- it looks like a good model, but that the software and hardware requirements are beyond what we're able to support at this point. That determination, I think, was made in, in the fall, last fall.

And the last section here is something called project impact. This is related to the Federal Emergency Management Agency. The County's been given a grant essentially to promote hazard mitigation. Mitigation strategies it says in here might include

something as simple as fastening bookcases so they don't fall over in an earthquake, planning the way a community may limit development in hazardous areas or other efforts that reduce disaster losses through prevention. The lead agency is the Clark Regional Communications Agency. They are putting together essentially an advisory committee to figure out how they're going to proceed. This is a grant that they've just received in the last couple of months. That's sort of the background of what's happening so.

LEE: Any questions that the Commissioners would have at this point?

TOWNE: Yes, I do. I'm sorry, I got to get my question in my head again. You had made the comment that -- when you were talking about the habitat conservation ordinance about best available science and all the discussions going around that and that you had had a March 2001 date time frame to address the remand?

EULER: That was for the agricultural exemption part of the habitat conservation ordinance, that's correct.

TOWNE: Okay, thank you.

LEE: What the agricultural exemption, it applies where there is existing agricultural operations, but it's not any agriculturally zoned land necessarily. It's where there's existing agricultural --

TOWNE: Use, actual uses.

LEE: -- use. And that has been those uses at the federal, state and local level have more or less been exempted from the growing buffering requirements in most pieces of legislation, but it's an issue that we keep coming back to.

BARCA: To build on that, so we have an agricultural exemption that's been challenged?

EULER: That's correct.

BARCA: We chose to go ahead and comply with the remand and said that we were going to rework the ordinance?

LEE: We were scheduled for a compliance hearing prior to that date before the Growth Management Hearings Board, we had discussed with the plaintiffs and presented a work program that showed us how we were going -- explained how we were approaching addressing this agricultural exemption issue, which included the formation of the task force and coming out with a revised set of regulations in March. Subsequently, however, we did learn of the ongoing discussions at the State level, the AFW group that Gordy mentioned, and really feel that they will flush out what is best available science on this matter a lot better than we will, and that it is a statewide issue at this point, not just a local issue as it applies to Clark County and we should wait for the results of that information.

And that was a -- we had alerted the Board or the Board, of course, had told us to do the work plan and present it to the plaintiff.

And we did that, but then subsequently when we received this update of information we asked for another work session, and the direction we got from the Board was to in fact we may want to convene the task force to bring them up to speed on some of the issues, et cetera, but in terms of turning around any revisions to the current regulations that would not happen until after we were informed by the State level process going on.

BARCA: And this is the same ordinance that we submitted to National Marine Fisheries for review?

LEE: Yes.

EULER: That's correct.

LEE: Just to give you an example of how common this agricultural exemption is, the new shoreline rules adopted in November also exempt existing agricultural operations from those rules. So even the most recent rules we have at the State level still have that in, which gives you a sense of how difficult an issue it is.

BARCA: The Skagit County issues that were brought forward by National Marine Fisheries, do we know what they say and why they were rejected to see how they play out in relationship to our review of the same agricultural type exemptions?

EULER: I believe their first -- the first time they drafted something both the State Department of Fish and Wildlife and National Marine Fisheries Service said the buffer you've chosen has no scientific basis and sent it back. I haven't followed it for a couple of months, I don't know what they've ultimately adopted, so I haven't been in touch with anybody up there.

LEE: As I recall I think it was originally proposed as a 50-foot buffer but it wasn't a 50-foot no touch zone, I think it might have been a no touch zone within 25 feet and then you could have sort of this transitional with some use between the 25 and 50 foot.

EULER: Again, the best available science requirement came in as an issue at that point.

TOWNE: Excuse me, do you know if there have been any ordinances passed in the county, any county in Washington that has been approved or kind of agreed upon for these buffers?

EULER: I do not.

TOWNE: Have there been any?

EULER: I don't know. I don't know.

MOSS: Do you mean by NMFS?

TOWNE: Uh-huh.

LEE: No, I'm not -- I'm not aware of any at this point in time. I think because the agricultural sector is very important to Skagit, I think they were kind of the leaders on this.

TOWNE: Right. Yeah, I would imagine so.

SMITH: When you're talking tulip bulbs that could be a lot of money 50, 25 feet is a huge difference.

EULER: That's right. They have a lot greater system of levies and dikes and some other things that were thought to be more detrimental to fish movement and fish survival than -- and that's they essentially are out in front of this issue, but we could be close behind.

SMITH: They're carving V ditches throughout all their, all their farms up there which those should have buffers as well, but they redig them every year and it's a disaster. That's an editorialization.

EULER: I should add that the Department of Ecology has issued a final rule on what -- on how you determine what constitutes "best available science." I think it's -- the last reading I had it was seven or eight pages long and it's in terms of peer review and scientific validity and scientific reliability and just some of the, some of the ways you determine if you've got the latest and the best.

LEE: I think it's more a credible academic process as opposed to a safe performance objective standard like a safe harbor. If you have a hundred foot buffer of a no touch zone that meets the test, whatever that might be. So it's not that explicit, it's more you go through this analysis, you have peer review, et cetera, et cetera, so it's more of an academic process as opposed to throwing out specific standards.

MOSS: You said that was the Department of Ecology that had published that?

EULER: Yes.

MOSS: What significance does that have insofar as NMFS goes?

EULER: I mentioned it under the -- under the GMA we're required for, at least for the critical areas ordinance to apply best available science. I'm assuming the definition for one is -- for "best available science" is the same under GMA as it would be under SMA.

LEE: As we amend existing ordinances or propose new ordinances we will fall under

those best available science requirements. It's not a retrofit that we have to go back and change anything at this point, but if we do proceed, and a lot of these other issues are going to force us to proceed with changes, but if we do proceed then we would have to meet that best available science test.

MOSS: Okay. So that I understand this, in the case of Skagit County you said that the buffers that were selected there were rejected by NMFS on the basis that they didn't comply with the best available science, there was no science that supported them?

EULER: I don't know exactly, but my -- the feeling I got from talking with the folks is that they picked a number and it was not supportable. But that's what I have gotten from --

LEE: If -- I think a point that you're getting at is NMFS --

MOSS: If you comply with the Department of Ecology --

LEE: -- has not recognized sort of that State standard as we do in the 4(d) test.

MOSS: Okay, thanks. That was a direct answer to my obscure question.

LEE: That's what I was thinking.

MOSS: Sorry. Thanks.

BARCA: Looking at some of the other items, when we go into the section under Shoreline Management Act and you talk about inadequate funding for the fairly extensive inventory and analysis process, we know that we're not going to get away with not doing this, we know that this is inevitable, and I think it was probably four or five months ago I asked about the idea what is our time frame for starting the inventory, and I look at this as no matter what we end up with with best available science, we still have to have the baseline and the foundation of where are we at today, what is the current state of each of the watersheds that we're going to be dealing with. Do we have a time frame established for starting this process?

LEE: In terms of the holistic sense that you're getting at, no, I don't think we do have an overall program to try and pull all these things together in some sort of common approach to addressing these issues. There are kind of several pieces of legislation, rules coming down, with little differences and distinction among them on the same pieces of property around the similar issues, so we don't have a holistic effort in that sense. In terms of specific time frames as they stand now on the rules, we have two years from November 29 to turn around amendments to the shoreline master plan. Given the current rules, though, there is considerable discussion going on at this session of the State legislature whether some of that should be changed, some of the time frames be extended. The governor is proposing additional funding that would be distributed to counties and cities to try and help accomplish the work. Currently there is no State funding available to us to do

that.

BARCA: So I'll come back to the aspect of just to the inventory and analysis. What would it take to get started doing the inventory and analysis of the watersheds knowing that it's inevitable regardless of which particular ordinance we're trying to comply and work towards?

LEE: I did a very -- for the Board of County Commissioners retreat last week and they were talking about their priorities for the year, one of the questions they asked is, yeah, what would it take to get going on something like this. I did a very rough cost estimate of what that might include and we came up -- at least based on my conversations with our GIS people, Public Works people, our own development engineering section, and these are very, very rough ballpark estimates so please don't ever hold them to me, but basically you're talking about I think it was \$1,900,000, of which about 1,300,000 related to environmental mapping capabilities, improving some of our GIS mapping capabilities, and another roughly 600,000 or so in staff and consultant cost to begin to pull these things together.

BARCA: And I'm assuming that number was for what you consider total project; is that correct? I'm not going to hold you to it.

LEE: Yeah. Yeah, I think, yes. I think the environmental mapping was -- I think a key piece of that was going down to two-foot contours throughout the county and that was about \$900,000 by itself. And so I think it's -- clearly when we're trying to do a better job of defining wetlands, floodplains and things like that, getting to that level of precision which now is technologically a possibility and it wasn't when, you know, 10, 20 years ago when we first started working on these things, but it is a big investment of dollars given the resources available at this point.

BARCA: Okay. Then I guess building off of that, do we have a fairly good understanding of the major watersheds now as far as their quality goes, the Salmon Creek, the East Fork of the Lewis, the Burnt Bridge Creek, yeah, what drains in the -- out of Lacamas in the Washougal River and that type of thing? Do we understand what type of quality we're dealing with at that level, the places where salmonoid habitat would really be in a major supply or abundance?

MILLER: It depends on what you're looking at. There has been a lot of work that is compartmentalized among the various agencies and jurisdictions. A lot of work, for instance, with regard to stormwater, FEMA, the Federal Emergency Management Administration, has done a lot of stuff with floodplains and floodways and et cetera. So there's a lot of data, but it does -- this effort through all of these ordinances will take a lot of collation of that data and there is substantial gaps that would need to get obtained.

BARCA: Okay. Jumping way forward on this, what I'm hoping for for this body to deal with is as we're going through comp plan and we're talking about land use policies there

may be significant areas that we want to have a discussion about pulling them out of inventory as available lands because of the critical nature of what they turn out to be, and I'm looking at this somewhat from the standpoint of if we're really talking about protection, trying to turn around these particular watersheds where they need to be actually have that type of intervention taking place, two years, three years, you know, as we phase out of the comp plan, I'm wondering what, you know, are we going to be in a position to even have that discussion, then, or are the decisions that we're going to be facing happening without that information. I would really like to have as much water quality information, watershed information as possible early in the process.

LEE: There is no major countywide effort at this point to do detailed watershed planning, it is something -- a concept we've thrown out. I know the Public Works Department is doing some -- in relation to some of the new stormwater requirements doing an estimate of the amount of impervious surfaces within the various watersheds. So that is some work that is going on, but I don't think it's of the order of magnitude of what you are suggesting.

BARCA: Now when you say "thrown out," that definition is tossed in the trash can or --

LEE: Put on the table --

BARCA: Put on the table --

LEE: Put on the table as a concept of, you know, we ought to start thinking about maybe trying to do these types of things in a little more cohesive fashion.

BARCA: I agree with that.

DELEISSEGUES: So, Pat, as far as the inventory goes, is there going to be kind of a philosophy if in doubt take it out as far as the land available land goes until we decide whether or not it is okay? I mean if we're in doubt about its buildable land qualities, we're going to take it out?

LEE: I don't think we're going to have the level of information desired this time around to do that. Whether we could catch up with it in the next five-year review, of course we're narrowing -- we narrow our opportunities in that five-year time year as long as we continue to grow, but I think realistically we're not going to be able to bring that information on-line for this particular comp plan review process. And I think the ESA Advisory Committee has some excellent suggestions in terms of things we can do to kind of set the stage to move it on from this point, but I don't think we'll be able to address those issues.

You know, there is -- in terms of many of these environmental issues in general I think there's three or four really key points. One, buffers is always a very contentious point, hotly discussed. A second is is what do you do in terms of adoptive manage monitoring,



monitoring first over time and adoptive management, and the thought being you begin to develop a better and better database through the monitoring program that then you can see as you take certain actions to improve the situation whether those actions are having an effect as you monitor them over time. If the adoptive management philosophy you realize that after five years things aren't getting better, you might very well be revisiting some of those earlier decisions. And if it's a land use regulation, for example, you know, instead of a 50-foot buffer maybe we're now talking about 100-foot buffers as what shows, you know, based on some sound monitoring what is giving us improvement or not, then you may be continually revisiting those issues over time.

I mean this is just an analysis of kind of a series of recurring issues that are going to pose us with some future challenges. They pose us with challenges in terms of the resource commitments for monitoring, which I think everyone agrees is a good idea, and also when you talk about adoptive management it certainly has implications across the board on whether the tools we choose to try and address some of these issues are effective over time, and if not, you know, do we raise bars further for example. And so those are some pretty, pretty difficult discussions to have, they're very important discussions to have, but they're difficult ones.

DELEISSEGUES: I just had a question, too, on the two-foot contour map. Does Clark County take advantage of the USGS DEM tapes to produce the two-foot elevation models? Because they're available, supposedly the GS is doing the whole country and I thought they were doing the populated areas quote, unquote first so I just wondered.

LEE: I don't know the specific technique that would be used. I know that that has been used in some areas. I know that also there's been some orthophotos used to try and get you down to that level of precision. I would have to defer that to our GIS people who sort of advised me on what it would take, but I don't know the specific approach they were thinking of.

TOWNE: I also would wonder if the whole, the whole study is stopping because of the two -- needing a two-foot contour; in other words could there not be a lot completed without the two-foot contour map?

LEE: I think it just gives you a far more level of a greater --

TOWNE: You're phasing.

LEE: -- level of position, that resolution that we have now. For example, in some parts of the county what we have is 200-foot contours, you can't have any sort of site-specific analysis with that type of precision in your environmental mapping.

TOWNE: But going from 200 to -- I mean is there -- in other words are you telling me that if you're going to change it from 200 to 10 or 5 you may as well wait until you get to 2? I mean there's not an in between that would make things -- you could keep moving from it?

LEE: I think you could at least -- as was advised by our GIS section you could probably mix 5 and 2 to some extent, depending on, you know, where in the county and that would reduce the price a little bit from the figure I said. But, again, you know, this is not, this is not any charge that we have to go and do this now, this was some information I provided in response to a similar question that the Board had asked for their retreat just to give you sort of an idea of what is the magnitude of the challenge that we're facing.

EULER: We've got in GIS coverage there are what we call critical areas, and when I asked -- prepared a map five or six months ago of critical areas they provided me a list of 14 data layers that went into that, and that's slopes and shorelines and a couple of different kinds of wetlands and that sort of thing. The issue here, I think, is not so much that it is we have macro coverage, what we're going to be required is I think, as Pat is alluding to, is micro coverage, we're going to have to fine-tune our information if we're going to do an analysis and come up with some kind of regulation that -- on the ground. The stuff if you look at GIS is fairly I don't want to say gross but you know what I mean, it's fairly undetailed, and here's a line just drawn this way, well, is that actually where it is. We're going to have to do some, some fairly extensive on-the-ground work if we're as I understand the -- what we're required to do in order to get at at least as far as shorelines, and ultimately that may again -- as I said, that model at least in terms of thinking could be used to look at countywide and so that would -- when Pat says a lot of that's going to be in -- going into mapping capabilities we've got to much better fine-tune our information.

TOWNE: I just, I just don't like the idea of not doing anything because it's not perfect. It's not quite to the extent of detail -- so the detail, the really good detail's going to cost this much, we can't afford it, let's not do it, but there are steps and phases that we could be moving in that we can afford and it will get us, you know, we're not wasting time, it will -- we can use it down the line when we get to the point of perfection. Do you see where I'm -- that's all I'm trying to get at. And I do know that there's been a lot of work completed in King County without two-foot contours and they've done a lot of work on watersheds and planning in watersheds and have come up with a lot of ordinances around those studies and that work such as zoning issues within critical watersheds, and those are large, those are just like kind of like what Ron was talking about that not all the small wetlands and all the detail, but just the rivers, the larger streams, that it seems like there's already a lot of work out there that we can, we can glean from.

DELEISSEGUES: There is.

MILLER: There is. And, again, there are a lot of different data sets available from a variety of different levels of government; that is, it gives us a general idea of kind of the conditions of watersheds, et cetera. It is the consistency between different areas of the county, you can get very detailed information about nutrients in Lacamas Lake versus Gee Creek, you know, versus Curtin Creek, et cetera, it's the consistency among them so that you have apples and apples that is problematic.

MOSS: I'm missing something here, I guess I fell off the boat a while ago. I understand what you're talking about the level of accuracy of the existing topography that we have in GIS mapping right now, I, you know, I certainly understand what its limitations are, what I'm failing to understand here is that if I were -- I guess the picture that I'm painting of this inventory that we're talking about undertaking, as I set that in my mind one of the first things that I look for would not have been this level of mapping and probably because I don't understand exactly what it's going to be used for. Why is it that you need two-foot contour intervals? What are you going to use those for? I guess I'm missing a big part of this picture here, the concept. When we talk about, you know, I certainly understand if you're talking about establishing a 100-year floodplain that you may need something like that, but is there, is there more that we're looking for here? Are we looking for a designation of steep slopes on a micro level rather than a macro level?

EULER: The current shoreline master plan which was adopted I think in 1974 or '76, I don't, a long time ago, designates for four different kinds of shorelines in addition to the designation of shorelines of State significance. We've got -- I don't know to what extent if that program has been, you know, successfully implemented, I haven't been here myself that long. The idea of updating the rules again sort of leads us in the direction of salmon recovery. I mean when you've -- at least in our impression is the kinds of things that we're being asked to do is getting at the water quality issue and recovering -- of doing some recovery assistance or something of not allowing any further degradation for listed species.

Topography is just one element of that. We need to know where, we need to know where the -- where are the, some of the smaller wetlands are, we need to know vegetative cover, we need to know where the critters are, we need to know what water quality is, some of the things you would look at in terms of watershed planning as Pat pointed out, that it's a variety of factors that are going to go into this inventory and analysis. Depending on which level where we want to set the bar for the County, we have to figure out how the ecosystems properly function. I mean that term is right in the Shoreline Management Act, we need to restore watersheds to properly functioning condition to the benefit of listed species. So there's a variety of data layers that are going to go into --

MOSS: I understand that. I think my question relates to there is going to be a cost to do this inventory, and what you've said is that a huge component of that cost is this two-foot contour interval.

LEE: Again, that is, that is sort of the bigger holistic approach. The figure that I threw out in terms of immediate plans for a shoreline master plan, no, I don't think we're saying we need to do that. We need to develop enough information -- I mean it may be desirable to do that. It seems to me it's desirable since, you know, we're being requested from a lot of different places to come up with sort of this recurring information, but in terms of the shorelines we need to do some field inventory first to delineate according to a new organizational system what segment of stream are we going to designate this, is it going to be, you know, sort of an urban stream, is it going to be something. So this one there's

a new classification process in the new shoreline rules so we have to change.

The second, then, is characterizing, okay, given this classification of stream segment what do we think a properly functioning condition for this classified stream segment could be, and I don't think we have the answers to that yet so that would require some consulting services to help us with the expertise to delineate what that might be. And then I think you get into the whole discussion of as one of the tools that may be applied, but certainly one of the tools called for is how do regulations change in terms of shoreline permits to try and follow through on what is characterized as the need to get to this properly functioning condition. So I think those are the big, the big pieces of information that are going to be costing us some money.

MOSS: Okay. Okay. Thanks.

SMITH: This is slightly unrelated, what effects on Clark County, if any, do you anticipate on the new Supreme Court ruling as far as jurisdiction by the Corp on some of these wetland areas?

MILLER: Actually a lot of those are already covered under Clark County Code so there is no immediate impact. There may well be some shake-out further down the road as the state, federal government may alter their regulations and the State may compensate in some fashion, we may compensate in some fashion.

SMITH: Thank you. Before we go on I think Cindy needs a break so we'll take about ten minutes, okay.

(Pause in proceedings.)

SMITH: Okay, I would like to reconvene the meeting at this time. We will reopen the County Planning Commission for January 18th, 2001. Pat.

LEE: Thank you, Carey. At this time I'd like Joel Rupley to come forward who started with us two weeks ago. Joel, as our new ESA coordinator, we're really happy to have him here and look forward to working with him as they try and tackle these issues.

RUPLEY: Thanks, Pat. I'm Joel Rupley. That name may be familiar to some people here in Clark County. I just came by tonight to introduce myself, to tell you that I understand the issues of being a Planning Commissioner, I'm coming directly from being a Cowlitz County Commissioner. And we did a -- actually we're responsible at the Commission level to hear more issues, land use issues, than are heard here in Clark County based on your more extensive planning -- I mean your hearing examiner system. So I appreciate, I always appreciated when the Planning Commission sent us a report that we could wade through and understand that the issues are well-developed and came off of the record and good questions were asked. So I'm very appreciative of the work that you do and the time that you spend on these relatively detailed thorny and often

boring issues.

With respect to my experience, I'm also -- help negotiate the forest and fish report. I represented all 39 counties of the state as we did that. It was a difficult and protracted set of negotiations, but there were motivated people at the table and so we were able to produce what ultimately became the forest and fish report and is now being -- in the process of being implemented at the state level for -- it essentially takes the forestry piece off of the table for local governments, which is a great benefit to Clark County. So I have a background and a fair understanding and contact with the folks who are making these things happen.

By way of diversion, I ran across a fellow from DOE this morning, I was up in Olympia and Lacey -- and ran across a fellow in DOE who's handling the ag, fish and water negotiations for, for the Department of Ecology and he gave me his cautiously optimistic view that there would be some agreement reached in the time frame that they've set out that Pat referred to and so maybe we will get this ag problem solved. The issues really revolve around what's called field office technical guides and their descriptions of the buffers, that's the bottom line, so that is moving forward.

I'd like to talk a little bit about the job itself, how I see it here as being a coordinator. I don't believe that our office will participate in site-specific kinds of discussions, we have neither the expertise nor the ability to comment on site-specific kinds of issues. I see it as a coordination process that brings together the district data pieces that you were referring to earlier that brings together the folks who have their separate areas of responsibility into a coordinated approach to endangered species planning and execution of recovery plans. For example, there is quite a bit of research going on in watersheds right now under a process called water resource inventory areas, and that's pronounced WRIA, why I have no idea, but those planning groups are operating within the county under the aegis of the Lower Columbia Fish Recovery Board, and so there's quite a bit of data being generated on the streams themselves and the watersheds with respect to water quantity and quality, habitat -- what's the other thing, John?

TYLER: Water quantity and quality that is Phase I now.

RUPLEY: Habitat and --

TYLER: And limiting factors of habitat and (inaudible).

RUPLEY: We're trying to -- there are areas that these bits of data are being collected, they deal with water quality and quantity and habitat so that we will be able to integrate those through our office into the kinds of ordinance writing and application that needs to happen here through the community development. There's also a limiting factors analysis going on through the Washington Conservation Commission that tells us what it is in each basin that is limiting the fish from their habitat, either passage or absence of certain functions that they depend on for their, for their -- to thrive. And those things could

include nutrients, could include water temperature, could include things like pools in the streams, it could talk about the substrate and quality of the -- the turbidity of the water for example. So those sets of data are being collected as well. Some of that is available right now through the Washington Conservation Commission.

I see our job as providing a level of coordination to pull that kind of information together to begin to do two things. One is to ensure that Clark County itself gets into regulatory compliance so that the entity is protected, is compliant, that the fish are protected, and in addition to that the citizens of Clark County if they go through the permitting process in Clark County can be assured that, that that permitting process is compliant with the Endangered Species Act and hence don't need to go any farther with their external permitting process other than the normally required permits that you would need to get. So that's the regulatory compliance aspect of this job.

The other aspect of the job I see is to actually recover fish. Wouldn't that be a nice, nice outcome. We don't want to really put the citizens of Clark County through all of this and not actually have something to show for it; otherwise it becomes an exercise in regulatory excess. What we really need to talk about here is how we get to recovery, how we get fish back, and that is an adjunct outcome that I hope will become foremost as we move through the entire process. So you will see us working on regulatory compliance and you will see us working on recovery of the fish. I would hope that, that we and our kids can go out and actually catch wild fish. And so it's a wonderful experience, fishing, in the first place, but in the second place knowledge that they're there as an indicated species is also a very good thing to aspire to. So I see us working towards recovery in this office as well and kind of marshalling the forces of Clark County to get to that end.

Finally, I would like to urge that you listen to the next two gentlemen that I will introduce from the Advisory Committee for the -- we call it the ESA Advisory Committee, and they're going to ask that and urge that you include in your comp plan revisions an environmental element that is sufficient to allow the inclusion of some of the kinds of activities we're talking about, the ordinance approach and the regular -- through the regulatory compliance approach as well as the activities for recovery. We see that, that that comp plan and any revision of it ought to be comprehensive enough to, to allow us to be able to conduct activities into these areas. I'd like to cite again, once again, Cowlitz County who is not planning under growth management but is subject to the Growth Management Act with respect to the critical areas. In Cowlitz County the comp plan and the shorelines master program, for example, are quite old and often in conflict with each other and it was very difficult for me as a Commissioner and for citizens as applicants to deal with those kinds of things, and so I would urge that in your revision of the comp plan make it easy so that we can actually use these things to further the ends that need to be furthered. And as you go through it in your recommendations for the comp plan I would therefore urge that you take the advice under careful consideration that you -- the two gentlemen will be giving you this evening and their requests as well. And Dean Longrie and Jim Malinowski will succeed me and make their presentation to you. I'll answer any questions.

SMITH: Thank you, Joel, and welcome aboard.

RUPLEY: Thank you.

LONGRIE: Thank you. My name is Dean Longrie, I'm the current chairman of the Endangered Species Task Force. With me tonight is Jim Malinowski who is the vice chairman, and as we did at your last public meeting we're here to present some recommendations from this committee. Let me take a minute just to tell you that the Commissioners I think went to a great deal of effort to get a really broad representation. There are several biologists like myself, I'm a retired wildlife biologist, botanist from the Forest Service, I've also lived here for over 22 years and have had a landscape contracting business part-time until I retired. Endangered species has been my life's work for over 30 years, like I say, about 20, 23 years in the Portland metropolitan area and then in the Northwest region of the Forest Service, and we have other biologists, we have contractors, engineers, developers, real estate people, dairy people and they really bring a perspective that's very broad and it's been very enlightening to all of us.

And our goal -- we've been active in this group, this is the beginning of our third year, not just a few months, this is our third year, and many of the people on that committee have served on other advisory committees, this was my first opportunity, and there's a lot of dedication. Just like yourself we get paid the same, I think, and, but our goal is similar in that we really love this county, we love the resources here, we'd like to give some of our time to help maintain -- perhaps enhance but at least maintain that quality if we can, help our government look at ways to do that that are compatible with many, many uses and many priorities.

I think you have a copy of the outline of our recommendations. I don't know, I can go through these, but I guess I've heard stated already several times tonight what I think is really the crux of what we're after. We would like to see salmon recovery not just to have the fish, but really what that represents along with the fish, and that's a quality environment that we're living in both for ourselves, our family and friends. And we think that in revising the County's plan, having that as one of the goals, a policy statement or some type of objective, this is -- we want to incorporate in our regulations, in our objectives, we want to have water quality, we want to have habitat that's suitable to maintain these endangered species. Where we have the information, the detailed information, yes, we can set standards, we can set regulations; where we don't I think it's clear that we have the opportunity to say this is our policy, this is our goal and therefore let people with good judgment determine, yes, this is in fact being met by your proposed development or your proposal for the permit. And in fact though we may not have a standard 25 feet, 30 feet that's going to ensure, we can say this is our objective, we're not going to degrade the water, we're not going to remove the vegetation that's providing the shade to maintain the temperature, whatever, as we know what some of the factors are degrading, we know that there's changes occurring, we can put -- say this is what we want to have different. I think that can be done today. We don't need a great deal of detailed information to do that, but we do have to provide something that if someone

wants to accomplish something that they're not going to feel like, gosh, I -- how can I ask to do this and not be sued.

And so this is what we're trying to work out with NMFS and with our own regulations, how can we in fact identify what is going to be a suitable effort to maintain this quality that we're all after. And what our Committee is trying to do is look at specific areas, ideas that can be treated in the comp plan. And this is just one of the areas we're looking at, but it's certainly a very important one and that's why we're making these recommendations. Let me just say that one of our goals tonight is to invite you to meet with our group if at all possible to discuss specific points such as what we have down here in our recommendations and see if there's some areas that we can provide additional information, understanding, both from the perspective that you have, that you're bringing to your recommendations and from our own experience. That really is, is my goal is to have more dialogue with you and this, our Committee, because our intent, I think, is the same. Any questions?

MOSS: When would you like to do that?

LONGRIE: We'd like to do it at your earliest convenience in the evening because all of us -- it would probably have to be some evening meeting, but, again, that's something I think we can work out with staff and John.

TYLER: We have regularly scheduled ESA Advisory Committee meetings -- my name is John Tyler and I'm with the Endangered Species Program, Endangered Species Act Program staff here at Clark County, and we have monthly ESA Advisory Committee meetings on the first Wednesday of every month. So that's only a week and a half away or two weeks away, so that might provide a good time to have a meeting. And those meetings are from 6:30 to 8:30.

TOWNE: Where are they held?

TYLER: At the Public Utility District on 117th. We can provide more information and directions if that's something that you would like to look into.

TOWNE: I'd appreciate that.

SMITH: That's the first Wednesday? Yeah, the 7th.

TOWNE: The 7th.

LONGRIE: Jim.

MOSS: I'm wondering if we shouldn't agree on a time to do that right now. You know, it's just as easy to schedule something when we're all together as it is to add --



DELEISSEGUES: Sonja, didn't we cancel one of our Thursday night meetings this next month because we wouldn't have anything to do, I mean?

WISER: Well, we've canceled the 15th.

MOSS: The 15th.

WISER: But he said it was the first or third Wednesday; right?

TYLER: The first Wednesday, which would be February 7th.

MOSS: Dick, you're not available on the 7th?

BARCA: Nor am I.

MOSS: The 7th is out, that's three. How about the 15th, would that work for you folks or -- that's a Thursday?

MALINOWSKI: I'm sure we would all go up and attend on your convenience.

LONGRIE: Yes.

SMITH: Will we have a room?

WISER: February 15th.

LEE: We could -- actually that's when normally you have -- that's the third Thursday so we should probably be booked for here, I think.

WISER: We're booked for here.

TOWNE: What about the 14th?

BARCA: Valentine's Day.

SMITH: We probably -- we may not have the room on the 14th.

BARCA: Please don't schedule something on Valentine's Day.

SMITH: We might not have the room on the 14th anyway.

TOWNE: Yeah, it's kind of hard to get all of us together.

SMITH: So the 15th at 6:30, does that soundly feasible?

LEE: That would be the normal third Thursday meeting date for the Planning Commission.

DELEISSEGUES: It's okay with me.

TOWNE: Yes, it works for me.

MOSS: It sounds like February the 15th is good for --

SMITH: So be it, February the 15th at 6:30 in this room.

LEE: Okay. And I suppose we ought to notify that as a public meeting because we're going to have --

SMITH: Sure.

BARCA: Is that an appropriate amount of time?

LEE: Yeah.

BARCA: Is it an adequate amount of time for notification?

LEE: Just -- yeah, it's a public meeting, it's not a hearing requirement so --

BARCA: Okay, right, that's right, it's not a hearing.

LEE: -- it's not as stringent a noticing requirement so it will work.

SMITH: Good. Jim.

MALINOWSKI: Okay, Jim Malinowski, I represent Clark County Citizens United on the advisory committee. I'm also a member of Fish First so I -- informally I represent their viewpoints too. The advisory committee is a very diverse group and we operate on a consensus basis so a little of what you see it has motherhood aspects to it. We probably differ quite a bit in our -- in how we would achieve these objectives, but I do think it's interesting that with this diverse group we did, were able to come to consensus that these were important objectives. And I think another area where there was strong consensus was that we really -- we strongly believe the comp plan has to be significantly revised to address the changes that have taken place because of ESA, that it's not going to be adequate to just tweak the plan, there should be a fundamental look at the comprehensive plan, a look at things like does it make sense to continue the 80/20 split, what are the impacts on farm forestry and farming of the Endangered Species Act in terms of commercial viability, those are all things that should be addressed in this comp plan review.

I think that we feel very strongly that things that you need to look at, this impervious surface, there needs to be some kind of flexibility and encouragement of it, of solutions that help fish. A lot of the regulations like our stormwater regulations do more harm than they do good, and there's, I think, a critical need to review all of these ordinances and make sure that that instead -- that they are actually helping improve the situation rather than hurting. And so those kinds of details are what we'd like to discuss in the meeting and we really need a dialogue and this -- that's one of the reasons why we'd like to have the workshop.

Just a final comment, and this is a personal one, rather, you know, than representing the advisory committee, but after listening to the discussion on the existing ag question, on the ordinance, I was on the habitat ordinance task force that drafted that. One of the reasons that we -- there were a lot of exemptions in that ordinance. The only one that was challenged was the ag exemption, but there's a real equity issue. There is how can you take away the existing ag exemption and not look at all the exemptions, and why should houses be located in those riparian zones any closer to the streams than agriculture. I think one of the problems with when you start taking and cutting away at one exemption, and as a Fish First member I strongly feel, for example, we should be fencing off the streams, that cattle and horses are doing damage, but that, you know, I was part of the group that proposed an alternative. Absent looking at all the exemptions, if you start pushing the existing agriculture too far from the streams and not dealing with those others, then I think you've got a major equity issue that has to be addressed.

And, finally, on the adaptive management discussion I think adaptive management can go both ways. I'm persuaded, I do -- I'm doing habitat restoration on my own property, I'm the project manager for Fish First on habitat restoration, Fish First believes the big problems are in-stream habitat, not so much the buffers but the fact that we've had degraded habitat in-stream. And so that adaptive management may say that you can relax some of your restrictions within the riparian zones rather than make them stronger as you get more experience, so I think in farm forestry we believe that the adaptive management element may allow us to relax some of the restrictions and still achieve the results. So those are the kinds of things that we think need to be discussed.

SMITH: How do you separate buffer from in-stream problems? Aren't they pretty closely related?

MALINOWSKI: No, not -- well, you know, one of the arguments of this so-called best available science is that you need 200-foot buffers so that trees can grow and fall into the streams and restore there. I mean you're talking about hundreds of years for that to have benefits. Fish First believes that we can do that much faster with restoration projects, go in and restore. And then, and then we think that's what we've done on the project we did on my property and my neighbor's property. We took a section of the stream that was pretty sterile and with no spawning activity, we've seen a significant amount of spawning activity. There was a period on my land for about a month and a half where I saw spawning pairs at least one or two every day. There were times when -- then when I saw

four or five. We've had, you know, by restoring the function in-stream we have dramatically improved the riparian function in that section of the stream.

I'm an advocate of buffers, I think you need the buffers, the issue is what are the land use restrictions within those buffers and are they equitable or are you urban -- are you using the same standards for the urban area as is for the rural areas. Those are the kinds of questions that have to be asked. I do think you need buffers. I was -- I supported the buffers that are in the habitat ordinance, the issue is what are, what are the reasonable land use restrictions required in those buffers to help salmon. And then the other question is what really helps salmon. Just locking up land along the streams doesn't necessarily help salmon. The question is how do you, how do you improve the function of the stream so that you really have a chance for salmon recovery. And that -- one of the things that Fish First does is we work with landowners. We believe the right way to do it is to work with the landowners and come up with win/win situations. And I think one of the things that I find most satisfying about working on the advisory committee is I do think that we've got a consensus among this diverse group of people that we want salmon recovery and we want healthy streams for the county. So I think that's a, you know, you might have arguments about how you get there, but I do think we have that consensus, and I'd like to see the comp plan build that consensus into it and have regulations that are based on what is really needed and have regulations that help and not hurt.

SMITH: Do you have any questions? Thank you. We're looking forward to our meeting.

LEE: I just want to make sure that you have a copy of the January 4th, 2001 memorandum from the ESA Office in front of you, that has their specific recommendations as their develop date. And as they said, they're looking forward to sitting down with you and discussing things in more detail on the 15th. So I just wanted to make sure you had that.

BARCA: In regard to that there are some very good recommendations and what I would like to see the task force build on is the aspect of specifically what ordinances you think are in need of review in regard to some of these. And I know that you've been working with John in that aspect, and the discussions you've had you've already talked about some of the ones that are most impacted, but at any particular point in time when we talk about the aspect of comp plan review and seeing where it's appropriate to be looking at those, if we have that from you as recommendations, it makes it easier for staff to start to work on the idea of dovetailing that in before they bring stuff to us. So perhaps you have an opportunity to work on that and in part you can show us what are obvious places when we meet the next time and, you know, that some of it will be worked out.

TOWNE: I have a question too. One of the recommendations by Mr. Malinowski was to extensively -- maybe not change the comp plan but be much more inclusive for salmon habitat and restoration, and it sounds like, you know, proposing a fair amount of policy and a fair amount of discussion, maybe a chapter of its own, that is actually in my head, is this something that's been in -- that's in the schedule or has been considered or is there

something, you know, I kind of want to -- it's a wonderful, I really like the idea of the recommendation, but I want to sort of know where we're at with the schedule and things.

LEE: The Board of Commissioners had specifically requested that the ESA Advisory Committee comment on during the comp review process and how that could support their efforts. I think, as I stated before, and certainly they know -- members of the advisory committee know in more detail than I do where the various studies and things by the Lower Columbia Fish Recovery Board, et cetera, stand. My -- given my current understanding, not that I can't be enlightened, but my current understanding I think we're to some extent out of sync in terms of timing when this comp plan review is scheduled for completion versus when all the information coming in through the ESA compliance plan will be available to totally dovetail the two to the extent that would be desirable. And, again, I'm -- that's given my limited, admitted limited understanding of where things stand at this point, but I do think, certainly, this is the right time to begin to insert some of this type of policy language into the comp plan that really then serves to direct future work activities to follow through on the ideas and the information needs that have been identified through these policies. And so that's how I see it working at this point, but, again, you know, perhaps on the 15th we'll have better information and decide if we're able to go further on our recommendations at this point or not.

TOWNE: Thank you.

SMITH: Thank you. Now we have a visitor from NMFS.

LEE: Yes, Patty first and John. John, are you going to introduce Patty?

TYLER: I'm going to help with the overhead.

LEE: Okay, great. I do want to thank John because John is the one that was able to connect with Patty and get her to come down and visit with us this evening, and I really appreciate her coming here to meet with the Commission and have the opportunity to meet her. So Patty Dornbusch of the National Marine Fishery Service and John Tyler of our ESA Office, if they could, they're here to talk about the NMFS perspective on ESA and any advice they can give us.

TOWNE: I have a quick question. Can I ask a quick question?

SMITH: No. Yeah.

TOWNE: I forgot to ask this. In my ignorance of the processes that the County, who would be responsible for writing new policy and organizing ESA policy? Would it be Long-range Planning or is it the ESA Office? Who do they call themselves? Joel, who are you?

LEE: In terms of the County's response to ESA it would be the ESA Office. They're sort

of the --

TOWNE: ESA Office.

LEE: -- point division. Where the Planning Commission and the Board have their authority is in the area of the ordinances. So the planning, any -- the ESA Advisory Committee may recommend a whole number of strategies, one of which involves changes to regulations to help the salmon recovery effort. Not all those tools would be in the purview of the Planning Commission, but certainly any changes to critical area ordinances would be. So I presume they would report to the Board, the Board would refer it to the Planning Commission as we work through the process of revising regulations to respond to ESA issues, but the ESA program is much broader than just the regulatory. And Joel can probably tell you more.

RUPLEY: If I could amplify just a little bit, that probably would come through the ESA Office, but remember that we are a coordinating entity and so we'd have to work hand in glove with all of the players, including the Planning Commission. I want to emphasize that the Board of County Commissioners here in Clark County has really taken a lead and are recognized statewide, and in fact regionally, and being out in front of this. And so we work for the citizens of Clark County and we work for the Board of Commissioners and we are going to pay attention to that and make sure that of the work we do gets coordinated and actually gets on the ground and makes a difference to what we're doing.

TOWNE: I guess just basically who would draft the policy, it would be ESA Office, the first draft of the policy?

RUPLEY: We can -- I've been on the job two weeks and I see this huge amount of not only reading but writing to do, and I suspect what we're going to be doing is cannibalizing a whole set of -- from a whole set of resources to develop a draft working with Planning primarily.

TOWNE: Okay.

LEE: And if I -- I guess sort of using this January 4 memo as an example of how it may work, this was sort of the ESA Advisory Committee facilitated by John and Joel coming up with their recommendations in terms of policy changes for the comp plan. So, really, if you will, the advisory committee sort of took the first cut, then it would filter through our joint Planning Commission, Board of County Commissioner hearings coming up and ultimately on to the Board of County Commissioners. So that's kind of how the work would flow.

TOWNE: Thank you.

DORNBUSCH: Good evening. With your permission I'm going to sit down since I'm temporarily incapacitated.

LEE: We did not inflict this pain and suffering on her, she did it all herself.

DORNBUSCH: That's right. My name's Patty Dornbusch, I work in the National Marine Fishery Service Office in Portland and I am actually the recovery coordinator for the Willamette basin. Rob Jones, who is the recovery coordinator for the Lower Columbia basin, had to be up in the Puget Sound area tonight so he wasn't able to be here. For that reason, since I'm familiar with Oregon, I may not be able to answer any specific questions you have that are related to ESA activities going on in the state of Washington, but I also should add that Clark County may see more of me in the immediate future because Rob Jones is leaving, not National Marine Fishery Service, but he's taking a new job with the (inaudible) Fisheries Division, so out of two weeks from Monday he will no longer be the recovery coordinator for the Lower Columbia basin.

What I wanted to do right now is kind of move the camera back a little bit and start with the kind of larger scale view of the Endangered Species Act and put the 4(d) Rules in context for you a little bit, and I thought about a good place to start is just talking about what the objectives of the Endangered Species Act are. And the Act states that the objectives are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide for the conservation of those species. And the point that I think is important there is that what Congress envisioned in the Endangered Species Act isn't some salmon in a zoo somewhere, that they envision a functioning ecosystem that can support healthy populations of species. So the focus is not just on the organisms themselves, but it's on restoring a functioning ecosystem that those species can depend on.

And John can give you the next overhead. Just to provide a little background on the way we got to the situation we have today with many salmon species listed under the Endangered Species Act, in 1990 National Marine Fishery Service decided to do a status review of all West Coast salmon, so looking at the status of all salmon throughout Washington, Oregon, Idaho and California. As part of that process what we had to do was identify distinct population segments, and for purposes of salmon we refer to those distinct population segments as Evolutionarily Significant Units or ESUs. Throughout the West Coast there were 52 of those ESUs identified, and of those 52, 26 are now listed as either threatened or endangered. And in this area there are three ESUs listed as threatened, Lower Columbia Steelhead, Lower Columbia Chinook and Columbia River Chum. And in addition Lower Columbia River Coho is a candidate for listing and is going to be undergoing a new status review soon with a listing decision to come next summer. A proposed listing decision to come to next summer.

And just to talk a little bit, I'm going to spend about one minute here about what the factors were that got us to this situation where so many salmon are listed under the Endangered Species Act. What you see on the overhead here is a lot of different factors for decline that encompass what we refer as the Four Hs. So there's harvest related factors for decline, there's hatchery related factors for decline, factors related to hydro,

hydro -- operation of the hydro system and habitat. And I think the important point here is just that we have to address all of these factors before we can actually have self-sustaining salmon populations and we can't rely just on addressing the Columbia River hydropower system, we can't rely just on addressing harvest through hatcheries or just on habitat, we have to address all of those factors for decline.

So to kind of switch gears now and talk a little bit more about the Endangered Species Act and about what the listings mean. For the National Marine Fishery Service there's a whole set of responsibilities that comes with the listing, including designating critical habitat, issuing protective regulations, developing recovery plans, carrying out consultations with federal agencies. For the public ESA compliance in the most simple terms means not violating something called the "take prohibition," and I'm going to explain a little bit more about the take prohibition in a minute. Everybody is responsible for complying with the ESA, federal agencies, State agencies, local governments, Tribal governments, individual actors, everybody is responsible for not taking a listed species, nobody gets an exemption from the Endangered Species Act.

When a species is listed as threatened, as endangered, which is the more dire listing status, so when a species is listed as "endangered" these take prohibitions go into place automatically so that all the protections of ESA are automatic for an endangered species.

When a species is listed as "threatened," which is the listing status for -- at this point for everything in the Lower Columbia that that take prohibition doesn't go into place automatically. So until we issue the 4(d) Rules there is no protection for a threatened species. The 4(d) Rules that went into place recently put the take prohibition in place, and in addition they provided an opportunity for parties to get some certainty that they are in compliance with the Endangered Species Act. And I'll explain that in a little bit more detail as we move on, but just to talk about the take prohibition, the definitions that are on the overhead, the first definition is the statutory definition. So you see "take" means to harass, harm, pursue, hunt, you can see the whole list of things that are prohibited. Obviously killing an endangered species is take.

And a significant word there in the definition is "harm," and that word has been defined in regulations by the National Marine Fishery Service and by Fish and Wildlife Service, and this is the National Marine Fishery Service regulatory definition, an act that kills or injures a listed -- injures a listed species may include significant habitat modification which actually kills or injures a listed species by interfering with essential behavioral patterns. So the important point there is that habitat modification, destroying habitat, can be a violation of the Endangered Species Act if it is actually leading to the death or injury of a fish by impairing it -- if it impairs their ability to spawn or to rear or to migrate to such an extent that they're dying, then "take" is occurring and whoever has caused that habitat modification is liable for that take.

There is some question about the extent to which state and local governments are responsible for preventing take or for prohibiting take from occurring, and there is some case law being established that's beginning to clarify what some of those responsibilities



are. And I have just listed a couple of cases here, these are kind of the main cases that have been established in state and local responsibility, and what's being established is that if a state agency or a local government is authorizing an activity that is found to be causing take, then that state or local agency is liable, they're responsible for the take. In addition, if it's within the authority of that agency or that local government to prohibit something, to prevent something from happening that's causing take, they're also liable for the take. So what that leaves state agencies and local governments and private parties with is this vague prohibition you can't take a listed species.

So the question a lot of people have is how do we know, you know, how do we know if we're taking a listed species, how do we know if we're in compliance with the Endangered Species Act, and there's a couple of mechanisms under the Act through which it's possible to know that you are in compliance. For federal agencies that's pretty clearly laid out because they are required to consult with National Marine Fishery Service or Fish and Wildlife Service for any activity that they permit or that they carry out themselves or that they fund, and so that consultation process gives them certainty that that action is in compliance with the ESA. And even though that's a requirement for federal agencies, it is relevant to local governments. For non-federal entities there are also options for being certain of being in compliance with the Endangered Species Act. Section 7, this requirement for federal agencies to consult with us, if a local government is involved in some activity that involves a federal permit or federal funding and that activity goes through this consultation process, then the local government knows that for the impacts of that activity they're in compliance with the Endangered Species Act. So when there's a federal nexus of some local government action that requires that action to go through a Section 7 process, that's one way that local government can have certainty that it's in compliance with the ESA.

There's two other mechanisms in the ESA. One is called a Section 10 Habitat Conservation Plan, and the other is through the 4(d) Rules, something called a limit on the take prohibitions. And this concept of limits is a new concept in the 4(d) Rules. What we've done in the past when we issued a 4(d) Rule, let's just say we're putting the take prohibition in place for these threatened species, so, again, it didn't give a lot of guidance, it didn't give much certainty to state agencies, local governments who are interested in being sure that they were not causing take, so what we did in the 4(d) Rules that we published last summer was incorporate limits. And the terminology "limits" is confusing to a lot of people and it is kind of unfortunate terminology. You can think of "a limit" as meaning that if there are activities that are conducted consistent with one of these limits in the rules, then the take -- the application of a take prohibition is limited, basically you're exempt from the take prohibition. We're saying that if we can identify local government programs that we believe are protective enough of a listed species, then we're not even going to bother putting that additional protection of the take prohibitions on those activities, we're not even going to apply the take prohibition to those activities, which means that those activities can go forward and you don't have to worry about a NMFS enforcement action. There's a lot less reason to be concerned with a third-party enforcement action because NMFS has bought off on those activities. The 4(d) Rules that

were published in July of this year covered 14 threatened ESUs, including all of the ESUs that are listed in this area. Those rules contain 13 different limits covering different types of activities. There are -- one of the limits was the Washington Forest and Fish Agreement which applies to forest practices in the state of Washington.

The limit that probably is of most interest to you as a local government and planning commission is the limit for municipal, residential, commercial and industrial development. What that limit did was outline 12 criteria, or evaluation considerations is the term that's used in the rule, that NMFS will use to evaluate local government programs when they're brought to us, and then if we evaluate those programs and can say this program meets all of these criteria or this program meets these criteria, then we can verify that we're acknowledging that you have that limit. That means that any planning and development activities that go forward under the program once we've approved it are basically exempt from the take prohibition. So, again, that means that you have certainty that you're in compliance with the Endangered Species Act, you don't have to worry about third-party lawsuits, and it means that we have certainty that the biological needs of the species are being provided for.

But I did want to clarify one thing, the rules put the take prohibitions in place, meaning that the city, the county is now liable for a take that occurs. The rules don't actually require that a local government bring its ordinances into compliance, what they do is provide that as an option for local governments that are interested in having that legal certainty that they're in compliance. So it's kind of a question of being at risk or being certain that you're in compliance with the Endangered Species Act.

The type of evaluation considerations that the limit for municipal, residential, commercial and industrial development addresses include, there's a partial list on the overhead, avoiding stormwater effects on the listed species, providing adequate riparian buffers, avoiding development in sensitive or unstable areas, protecting wetlands and floodplains. Some of the others include protecting the historic stream meander pattern, reducing need for landscaping in such a way that you're reducing the need for watering or for using pesticides, in your comprehensive plan addressing water supply demands and making sure that future development will not utilize water supply in a way that's going to be detrimental to a listed species, avoiding crossing the streams by roads or utilities. And we also to approve something under this limit in the 4(d) Rule we would need to know that there is adequate funding for the program to be implemented, that there is going to be some kind of evaluation of the effectiveness of the program and some kind of reporting to NMFS so that we could, could make sure that it was as effective as it was projected to be.

In working with local governments and explaining the 4(d) Rules and the process of developing programs that will be compliant with the 4(d) Rules, we've kind of outlined a three step process that involves, first of all, understanding what the environmental baseline conditions are, because we have to know what the existing conditions are before we can really get an accurate picture of how development programs and activities are going to affect those baseline conditions. So first up is to have a sense of what the

existing environmental conditions are, then working through the impact of programs and activities on those baseline conditions, so how might the comprehensive planning process affect baseline conditions, how might the stormwater program, how might the way we're doing erosion control affect the existing environmental baseline conditions, and then thinking through those options for compliance with the Endangered Species Act. If you're interested in reducing the County's liability under the ESA are you -- are there certain activities that can be covered through the Section 7 consultation process, are there activities that you can develop and submit to us under a 4(d) Rule, and then habitat conservation plan again is another way of having certainty that you're in compliance with the ESA.

Just a couple things also that we keep in mind and that we urge local governments and state agencies to keep in mind, what we need to do is restore natural habitat forming processes so that we are actually restoring a functional ecosystem and letting the ecosystem function instead of trying to engineer a system that approximates natural conditions. Another important point is that there aren't any quick fixes to this problem, it's a long-term issue. The solutions are going to be long-term solutions so there's a need to think far into the future in thinking about, first of all, how we're going to recover salmon, and, second, if we do recover them in our lifetime how we're going to make sure that their habitat is protected into the future. And that all entails thinking differently about how we go about building cities, how we go about harvesting trees, how we go about practicing agriculture, how we go about operating the Columbia River hydropower system, so it's clear that we have -- we as a community have to rethink the way we go about a lot of our normal activities if we are going to recover salmon.

And I can take any questions you have about the ESA in general and I can try to answer more specific questions, but as I warned I may not know too much about what's going on in Washington.

BARCA: A question on a general basis for NMFS and their processes. I believe you get involved in permitting when there are projects such as removal of barriers on streams?

DORNBUSCH: We would get involved in a project like that because that type of project would most likely require a federal permit from the Corp of Engineers and so there would most likely be a Section 7 consultation, meaning that the Corp is actually the agency that's responsible for coming to NMFS, but the project, the part of carrying out the project would also be involved, so most likely any activity like that would be covered under some kind of federal consultation.

BARCA: As we started our meeting earlier this evening we talked about the way that -- Rich Carson had an evaluation of how his organization worked and how quickly they were able to turn work over. I'm wondering, are there new mechanisms going in at the federal level to try and turn these permits over in a fashion that's reasonable for trying to actually do recovery or is there changes happening at your organization to help facilitate that?

DORNBUSCH: Yeah, we are working on it. The mechanism that would be most helpful to us is a lot of money and a lot of more staff people. I mean, honestly, the agency is understaffed and that that is a big burden in carrying out the number of consultations that we are required to carry out, but we are also working with the Corp on doing consultations programmatically instead of on a project-by-project basis so that we can consult for a category of projects and come up with general conditions for carrying out those projects. And the goal there is to streamline that process so that we don't have to get tied up in consultations for specific projects.

And we do recognize that it's a problem and, you know, the interest of the agency in making sure that the consultation takes place at some level is that it's possible to do a lot of damage by trying to do something good like remove a barrier at a fish passage, and so we need to know that those projects are being done in a way that's not causing short-term damage or longer term damage. That's our interest in carrying out that consultation and we are looking at every avenue possible to streamline the process while making sure that we carry out our statutory duties because there are also a lot of people ready and waiting to sue us for not carrying out that consultation process.

BARCA: Sure. And I'm certainly not saying that your oversight isn't warranted and valuable, I guess what I'm hoping to take place is that when private citizens take their time and come up with plans that they want to get implemented, it's nice to know that two years from now we're not still talking about implementing those plans, that we're able to actually to get funding from the County, funding from the State and move forward without having to say that and all we're missing is the federal permits.

MOSS: Yeah. No, I liked your question. I have -- as an engineer involved in development planning and design and permitting I have exactly the same concerns. I'm wondering what NMFS is doing to avoid being the bottleneck that really stops many ordinary things from happening for months or what appears to be potentially years here. While our permitting experience has been somewhat limited, I've been kind of aghast at the length of time that it takes to get a very simple permit approved through the Corp of Engineers circulating through NMFS and now through U.S. Fish and Wildlife too because of the listing of the sea run cutthroat trout, I believe it is.

What -- is there any realistic hope that your agency is going to get more, significantly more funding so that you can get the staff that you need to do these reviews in a timely manner? Or in the alternative you had mentioned that you may be doing some program type reviews with the Corp of Engineers, is there a timetable for completion of that kind of an effort so that there's some certainty that permits will flow in some kind of a timely fashion?

DORNBUSCH: Your first question on funding, unfortunately we did not get significantly more funding for this current fiscal year. We just got our budget within the past month and we didn't get significantly more funding this year. And, you know, as you were talking I was thinking. I know that the NMFS office in Portland is working with the Corp of

Engineers on a programmatic general permit that covers I think 15 different categories of activities. Now what I'm not certain of is whether that's a consultation with the Portland District Corp of Engineers and whether their jurisdiction includes Washington, so I'm not sure what the scope of that consultation is. I know that it addresses those activities in Oregon.

MOSS: But you don't know whether anything similar is happening in Seattle?

DORNBUSCH: I'm not positive. And I can find out and get back to John or Joel and they can get back to you. But we -- I mean you're absolutely right, it's a problem. And I think another factor is that the Endangered Species Act is new to people carrying out this type of projects and there's going to be a process of recognizing that the project planning may take longer because of the need to incorporate ESA considerations and so I think that it's going to be a learning process for everybody involved. But it is a problem, you're absolutely right, and we are working with the Corp to try to streamline the consultation process.

MOSS: Well, my, you know, I understand that the process is going to take longer, the biological assessments that are required downstream, you know, from -- if we're talking about a stream crossing and needing a permit for that, of course that sort of thing takes some time. What concerns me more is the time after that, after the permit is actually filed, and, you know, our experience has been it kind of goes into a black hole and we never see it again, we get no status reports. You know, I'm beginning to wonder if the world is going to have to come to an end here for a few years before we get passed this, this situation.

DORNBUSCH: Yeah, I, you know, and again I apologize, I'm not really sure about the way the consultations in Washington are done from the Olympia NMFS office and I work with the biologists in the Portland office.

MOSS: That's why I'm comfortable in asking you this question, you know, obviously I'm not placing blame on you for this --

DORNBUSCH: But I mean, you know, we are aware that --

MOSS: -- but it is a big area of concern, though, for many people.

DORNBUSCH: Yes, we are aware that there are a lot of people who are frustrated with the length of time it takes to complete some of the consultations.

SMITH: The term "restoring natural process as an ecosystem functions" places like the main stem of the Columbia River where we had a spring fresh that it is 12 feet higher than it was now and stranded water areas along the river, a lot of species adapt, you know, a lot of species depended on those kind of wetlands, the only way to recreate them would possibly be water control structures, which is the only -- also the only way you're going to

get rid of reed canary grass, which will eventually be the end of these type of depressions. How do you handle that? Do you try to do a prohibition on water control structures or do you try to get fish friendly water control structures? Or do you get water control structures where it's maintained in a timeliness, you know, on a temporal basis where the fish passage is not a problem or stranding wouldn't be a problem or possibly some of these water control structures and connections to the main stem may actually eliminate some of the passing, some of the stranding problems that are naturally occurring? What's your philosophy as far as natural is concerned, I guess, on that?

DORNBUSCH: I can't address your specific question about water control structures, but you raise a very good and interesting point. First of all, what we mean by "a properly functioning condition" is not restoring some kind of pristine historic conditions but to define biologically what is properly functioning is -- in many sense is easier in a forested environment than it is in a highly developed, highly modified urban environment. And it's something that there's a lot of discussion going on among scientists, among NMFS biologists, and at this point I think it's an issue where NMFS doesn't have clear guidance on what does properly functioning condition look like in a developed environment, and it's something that we're working with the City of Portland, the City of Seattle, Clark County, Vancouver, I mean these are discussions that have been going on among the local governments and the services and researchers who are looking at what kind of function can you obtain in urban areas.

And, you know, there's a lot of ways to look at it. One issue is just that where the habitat in a lot of low, low, lowland main stem areas is being used mainly as migratory habitat one of the major issues is water quality, because if, you know, if fish are dying just migrating through then and that's a function that we can provide in the present, we can improve water quality. You know, obviously we're not going to be talking in the near term about removing sea walls and things like that, but we have to look at what kind of function can we get in the short term and then in the longer term through looking at opportunities for redevelopment what kind of function can we get in the long term.

TOWNE: I had a -- the whole question of take is kind of complicated and I'm sure we couldn't get through all of it, but just hopefully you can answer this for me. The first thing I'd like to paraphrase and make sure I understood what you were saying, and that is that local governments are -- will be held responsible for complying to the new rules and how much time -- is there a time period for them to comply? I mean obviously tomorrow they can't if, you know, the rule came down and they're not in compliance there's -- they don't have a comprehensive plan and they don't have ordinances to comply. And you're talking about programs, what are the different programs that you'd be looking for that a jurisdiction is in compliance? What kind of time period do they have before they're in compliance, and can somebody list a taking or a take to someone within that before the time period? Are you following me?

DORNBUSCH: You paraphrased the situation correctly in terms of local government liability. The take prohibition is now in effect and so local governments are now liable.

The question about time frames, there was a period between the publication of the rules and their effective date. They became effective -- they were published in July, they became effective in September for steelhead and they became effective this month for the other species. Part of that extended effective date for the other species was an attempt to give local jurisdictions some time to kind of ramp up and begin looking at what they needed to do to comply. And we weren't able to do that extended effective date for steelhead because the effective date of the rules was part of the settlement agreement that we've reached with some environmental groups who had sued us.

Given that I think that the National Marine Fishery Service, and we did discuss this in the comment response section of the rules, if we're engaged in -- or if a local government is engaged in good faith negotiations with us and is working toward compliance, then it's very unlikely that, that NMFS would initiate an enforcement action for the programs that we are working with that local government on. The possibility of a third-party lawsuit we have no control over, so now that the take prohibitions are in effect that is a possibility. Did that, I think -- did that answer all of your questions?

TOWNE: Yes, it does. Thank you.

SMITH: The programmatic approach that -- the programmatic approach that you suggested might speed things along. Would that be just taking types of projects and deciding that this type of a project is something we can live with as opposed to looking at it case-by-case or side-by-side? Would this be a blanket type permitting?

DORNBUSCH: Yeah. But one of the advantages of the 4(d) Rule both for us and for local governments is that it does allow a programmatic approach so that a local government could come to us with a stormwater management plan, erosion and sediment control ordinances, a comprehensive plan or rules relating to impervious surface, things like that, and we can approve those ordinances and planning documents, which would mean, then, any activities that took place consistent with them would be covered and we wouldn't have to go through case-by-case project approvals. Now the one caveat there is that this Section 7 consultation process, that's a requirement that the Act places on federal agencies and we can't eliminate that requirement, but the existence of programs that have been approved under a 4(d) Rule would go a long way towards streamlining that Section 7 process.

MOSS: This -- I'd like to have a better understanding of how this process of local regulation approval happens. And I'm well-aware that you have approved certain regulations already, but Clark County has submitted its critical areas ordinances almost a year ago, what happens, how does the process work, who's involved, is there public input, are there hearings, what -- can you just briefly describe how NMFS will go about approving or disapproving that?

DORNBUSCH: The way the process would work is that we would get a submittal from a local government, and I don't -- I'm not familiar, again, with exactly what Clark County

submitted. And I know that they submitted it before -- I think before the rules were effective so they in some ways had the misfortune of submitting something to us very early because just as we were giving local governments time to come to grips with what was facing them, and we were coming to grips with what was facing us, and kind of going through a process of figuring out, you know, how are we going to evaluate these programs once they're submitted to us, who's going to do the evaluation and what the whole procedure is going to be in terms of administrative process and in terms of staff.

And we also did a lot of thinking about what we wanted to see in the submittals in terms of documentation in front of the local government about what are the baseline conditions, what are the effects of these actions on the baseline conditions. And so I'm not sure if Clark County's package included all of those things that we now know that we need to see in the submittal, but the process would work the local government would submit its program to us, we would review the program and then develop findings which we would have to publish in the Federal Register. Assuming that we can say we think Clark County's program meets these evaluation considerations and we're going to give the program a limit, we would publish those findings in the Federal Register and there would be a 30-day public comment period. After that public comment period, if there were no substantive changes that needed to be made, I believe the mechanism that -- would be a letter from the regional administrator to the County saying we have approved this limit.

RUPLEY: Commissioner Moss, I'd like to add to that as well that we have just recently entered into a dialogue with the Lacey folks at NMFS to determine how our application with the HCO might meet the sets of rules that were released last fall by NMFS, and we're trying to understand whether or not we need to broaden our scope by including other ordinances in that application. And we also are trying to understand such terms as what does "effects analysis" really mean, what is the protocol that we can use to do that. So we really can't anticipate a direct response from NMFS on our submission until we clarify the details. And I'm not quite sure what our time frame is, but we are proceeding with all due governmental speed.

SMITH: Oxymoron. Ron.

BARCA: Just for the record, then, what's been submitted is the habitat conservation ordinance, okay.

MOSS: Only.

BARCA: Only.

TYLER: We submitted two things. John Tyler of Clark County ESA program -- on March 31st of 2000 Clark County's ESA program submitted two documents to the National Marine Fishery Service. The first was the habitat conservation ordinance which we had assessed for its effectiveness and impacts on salmon. The second document that was submitted was a detailed plan which outlined our strategy to achieve 4(d) compliance



which outlined how we would look at each of the critical areas ordinances, our regulations for critical areas and how we would determine whether they did or did not meet the standards that are identified through the 4(d) Rule process.

And Patty pointed out a very critical piece of information, that our submission was made on March 31st, but the rules for engaging in a negotiation with the National Marine Fishery Service were published at a date after we made our submission so we didn't have the benefit of the limit number 12 which is referred to kindly as the mercy limit referring to municipal, residential, commercial and industrial development. We now have those guidelines and those are of great use to us as we continue our dialogue with the NMFS staff in the Lacey Office.

SMITH: Any more questions for Patty?

DELEISSEGUES: I just had one. I wondered if the recent Supreme Court decision regarding the Corp of Engineers and freestanding body waters that are not tributary to streams, navigable streams, had any effect on your agency and your involvement in those kinds of situations?

DORNBUSCH: You know, I heard somebody ask that question earlier and was thinking I bet they're going to ask me that question. I don't know the answer to that question, I'm sorry.

SMITH: Of course your anadromous fish are using waterways that are connected usually, aren't they, it's usually not perched wetlands?

DORNBUSCH: Right.

DELEISSEGUES: Carey, is that a "yes" or "no"?

DORNBUSCH: Although I mean, you know, the --

SMITH: That would be "yes." Yes, it won't affect them.

BARCA: Until they list the perch and carp.

DELEISSEGUES: Yes, it won't affect them. Spoken like a true Planning Commissioner.

TOWNE: Yeah, would you have any advice for us as we proceed in our comprehensive plan review and on how, you know, one of our discussions earlier or comments earlier was how are we going to make some of these important decisions on land use, zoning, et cetera, et cetera, without the information of -- for watersheds and critical areas, although we're told some of it's coming along, is there any advice that you might give us to help us?

DORNBUSCH: I was interested in listening to that earlier conversation about information that you have available how much is it going to cost to get better information. What our advice normally is is that we encourage people to proceed based on best available information. And I think the key words there are "proceed" and "available information." There is a lot of information available at this point, and granted, you know, that's our advice based on how can we fastest get programs on the ground that may be protecting fish. And there's a lot of other considerations that you have to factor into your decisions, but we don't want people to say, well, we have to collect data for five more years before we can begin looking at where we can improve our ordinances. And I think that the gentleman from the ESA Advisory Committee had some very good thoughts about using the information that's available now and that can, first of all, help you identify where you need additional or more refined information. Also through the monitoring process and adaptive management you can identify additional information needs.

TOWNE: Okay, thank you.

SMITH: Any more questions? Thank you.

DORNBUSCH: Thanks.

SMITH: I hope you're healing well.

DORNBUSCH: Thank you.

TOWNE: Thank you for coming all the way here to inform us.

DORNBUSCH: Thanks, my pleasure.

SMITH: She needs the overtime; right?

MOSS: Don't we all.

SMITH: Well, Pat, have you got anything else for us?

LEE: I hope not. I think we've decided to meet on the 15th with the advisory committee, that's one thing I would have brought up if we hadn't discussed it earlier.

MOSS: Are we going to give our public a chance to comment? See our loyal public Ken Hadley is still here and he's the only one that hasn't had a chance to speak.

HADLEY: I'm willing to close up shop and go home.

**OLD BUSINESS**

None.

**NEW BUSINESS**

None.

**COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION**

None.

**ADJOURNMENT**

The meeting adjourned at 9:45 p.m. All proceedings of tonight's meeting are filed at Clark County Community Development/Long Range Planning.

\_\_\_\_\_  
Carey Smith, Acting Chair

\_\_\_\_\_  
Date

*Minutes Transcribed By:*  
*Cindy Holley, Court Reporter*  
*Sonja Wiser, Administrative Assistant*

Sw\min 01-18-01